# PROCEEDINGS

IN

# A CAUSE,

TRIED

AT WESTMINSTER HALL,

On WEDNESDAY, FEB. 2d, 1791,

Before Lord KENYON and a Special Jury;

WHEREIN

Mr. *CHARLES RYLAND*,

CHIEF MATE of the WALPOLE East Indiaman, was

PLAINTIFF;

AND

Mr. *HENRY CHURCHILL*,

COMMANDER of the above SHIP, was

DEFENDANT;

FOR

An Unjuſt and Malicious Suſpenſion.

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TAKEN DOWN IN SHORT-HAND,

By WILLIAM BLANCHARD.

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*LONDON:*

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1791.

JUL 8 1929

July 8 1929

COUNSEL retained for the PLAINTIFF:

The Hon. THOMAS ERSKINE;

Meſſrs. { MINGAY, GARROW, and WM. ROBINSON. *

ATTORNEY, Mr. HENRY MADDOCK.

COUNSEL for the DEFENDANT:

Meſſrs. { BEARCROFT, BOWER, LAW, and BALDWIN.

ATTORNEY for the DEFENDANT, Mr. JOHN HANSON.

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* Mr. Robinſon could not attend the Cauſe.

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## JURORS.

William Golightly, Eſq; Berner-ſtreet
Henry Delamaine, of ſame
Joſeph Ballard, Eſq; Bedford Row
James Brooks, Upper Charlotte Street
Paul Prickett, Southampton Street
William Hawkeſworth, New Ormond Street
James Bond, Golden Lane
Timothy Williamſon, of Great Ruſſel Street
Edward Phillips, Great James Street
George Robinſon, Harpur Street

## TALESMEN.

Sebaſtian Juby, of Oxford Street, Hatter
Joſeph Binter, of Wardour Street, Furrier

# PROCEEDINGS, &c.

*MR. GARROW.* May it pleaſe your lordſhip. Gentlemen of the jury, this is an action wherein Mr. Charles Ryland, chief mate of the Walpole Eaſt Indiaman, is plaintiff; and Mr. Henry Churchill, commander of the ſame ſhip, is the defendant; it is brought for "*an unjuſt and malicious ſuſpenſion*" of the plaintiff from his office of chief mate, to which the defendant has pleaded the general iſſue, "Not Guilty," whereupon iſſue is joined.

*Here the Short-hand Writer could not do Juſtice to the eloquent Language of Mr. Erſkine, in his Addreſs to the Jury, more than by taking down the Subſtance.*

*The Honourable Thomas Erſkine.* Gentlemen of the jury, I am alſo of counſel for the plaintiff, in this cauſe, who was appointed chief mate of the Walpole Eaſt Indiaman, in a voyage to the Eaſt Indies, under the

the command of Captain Churchill; and who, upon a former occaſion, was chief mate of the Lord North. From his earlieſt youth up to this moment he has been in the profeſſion, and has maintained an honourable reputation in the ſervice. Captain Churchill is a man, undoubtedly of fortune and rank in this country; it ſeems he had a deſire of having for his firſt officer, a Mr. Rutherfurd, who had formerly ſailed with him. Undoubtedly a man has a right to have for his aſſociates, perſons whom he regards; but he muſt take care, if he fixes on particular perſons, that he does not ſeek to procure them by doing miſchief and injuſtice to others, who happen to be more unfortunate. Gentlemen, it will appear, that Mr. Ryland came into the ſhip greatly againſt the inclination of Captain Churchill; he was the choice of the owners; and I am ready to admit, it is an uncomfortable thing to a captain to receive an officer on the recommendation of the owners, and againſt the intereſts of his own friend; but he is not therefore to abuſe and condemn without reaſon, and to purſue with malignity, an officer ſo circumſtanced, which I am now about to charge.

Gentlemen, they ſailed from Graveſend, on the 24th of March, 1789; and the ſhip had not proceeded on her voyage longer than the 19th of April following, when Captain Churchill thought fit to ſuſpend the plaintiff from the ſituation of firſt mate, to which he was appointed by the owners, and who

was entitled to hold that ſituation as long as he conducted himſelf with propriety.

Gentlemen, it is the right of the captain in all ſervices, and more eſpecially in thoſe where men are remote from the authority of courts, to maintain diſcipline by puniſhment; I do not mean to contend that the captain may not by law ſuſpend an officer, from neceſſity, and for the preſervation of the ſhip; but if he does it capriciouſly, and without cauſe, without the advice and counſel of the reſt of the officers, by an appeal to the laws of his country, the injured and aggrieved man will receive ample ſatisfaction.

Gentlemen, it will appear, that from the 24th of March, to the 19th of April; from the firſt moment, indeed, that the plaintiff ſet his foot in the ſhip, the captain took every occaſion to be offended with him, upon the ſlighteſt grounds, becauſe he had a rooted chagrin in his mind, againſt him, founded upon the idea, that he ſtood in the way of another; this naturally gave riſe to a multitude of trivial complaints againſt the plaintiff; and it is extremely difficult for a man to conduct himſelf, under the command of another, who is watching for an opportunity to diſpoſſeſs him, and ſeeking how he can faſten upon ſome plauſible excuſe, to diſgrace him, to deſtroy his property and his hopes; for moſt unqueſtionably his hopes in the ſervice remain upon your verdict: I do not wiſh to ſtate a ſyllable more than I am given to underſtand I ſhall be able to prove; and you will therefore hereafter attend to the

evidence

evidence which I am only now about to open for your conſideration: When the ſhip was ſailing at ſea, there was a ſlight ſquall, attended with a little rain, which the captain ſaw in his cabin, but which the officer of the watch ſaw better from the deck, and found no neceſſity for ſhortening ſail; the defendant came up in a violent paſſion, and though the mate was obſerving the uniform courſe of ſailing; although the only miſchief that could have happened from the little puff of wind, was to the higher ſtudding ſails; and although in fact not a ſail was ſplit, a boom ſprung, or a rope-yarn carried away, yet the captain made this a foundation for removing this gentleman; for wounding his character and honour; for diſgracing him from his ſituation as an officer; for reducing his cabin; and expoſing him to the inſults of the meaneſt man in the ſhip. Mr. Ryland was ſuſpended from that hour, till he came back again to England; all that time he was deprived of his privilege, of every honour, and of every command; and not merely thoſe, but of that comfort and peace of mind, of the value of which you are to judge, and to eſtimate the price of a high Engliſh ſpirit, which was wounded by this unjuſt proceeding.

Gentlemen, when Mr. Churchill had done this, it became neceſſary to find out afterwards, other reaſons, as a foundation for it; for it would be a moſt extraordinary thing, if he could juſtify it without ſome grounds; and you will ſeriouſly conſider of thoſe which he founds his defence

upon; but can he in his defence prove that, on the inquiry upon which the ſuſpenſion took place, he had collected together a ſingle man, or officer?—No, he did it of his own accord, without the advice of his officers, which it was his duty to have had. Between the 24th of March, and the 19th of April, he could not find any greater reaſon to found the ſuſpenſion upon, than the carrying ſail during the ſquall; though there was not a rope-yarn carried away, yet in obedience to the captain's orders, the plaintiff had the ſtudding ſails hauled down; but no ſooner had the captain ſuſpended him, than the ſame ſails were again ſet, and away went the ſhip with all her canvas out; ſuch being the act, and the oſtenſible foundation for it, let us look for the motive. Who came in the room of the plaintiff thus ſuſpended? Mr. William Rutherfurd, the man who was the original choice of the captain; the man who had been diſappointed; immediately this man is appointed in his room, and then *the ſame ſail* is carried, for carrying which, the plaintiff was removed.

There is a circumſtance, which will weigh a great deal in deciding a caſe of this ſort; that is, the Eaſt India Company has no power of diſcipline, by act of parliament, ſuch as is given in the king's navy; the captain of a man of war can adminiſter corporal puniſhment even to a dozen laſhes; and he can ſuſpend an officer; but he is enjoined to ſummon his officers together, and to take their opinion;

if

if he does this, he can maintain a verdict, and ſay, "I ſummoned the officers together, I took their "advice, and I held a court of juſtice; if I am "wrong, I am ſure I ſhall have the protection of "the jury." Captain Churchill might ſay "I was "tired of this man's tranſgreſſions; and when I "ſaw I could not have the duty done properly, I "called the officers together, and charged him with "ſuch, and ſuch things; and then it ended with "his ſuſpenſion." If Captain Churchill can ſay he has done this, he muſt have judgment, and I can have no writ of error for ſuch a judgment; if I could, there would be no navigation in England.

What gentleman would put his foot in a ſhip, or ſuffer his ſon, if when he had travelled up through the different gradations, to put himſelf in a place, where, however honourable it may be, he may ſubject himſelf to be under the frown of a perſon, who of himſelf may vilify his character, and ruin his property. I believe there is but one thing that makes men undertake ſuch long voyages, and that is, the proſpect of being enabled to return with joy and plenty to their families; it is that which carries them through their toils, and which gives them ſtrength to embark; and I do ſay if a man was to put his foot into a ſhip under any other circumſtances, no man but a wretch would be a ſailor.

Gentlemen, the plaintiff remained in a ſtate of ſuſpenſion from the 19th of April, till the ſhip had performed

her voyage; all his things were driven about, and he had no accommodation, becauſe he was no longer firſt mate; I deſire you to conſider the ſituation in which this gentleman was. I never ſhall forget the obſervation of a learned gentleman; I ſpeak of Mr. Lee; he deſired the jury to conſider "what muſt have been the feelings of a man in the ſilent hour of night, under ſuch circumſtances?" Gentlemen, during all that time, what muſt have been the feelings of a wounded ſpirit? That "*The longeſt day will* "*have an end; and one day or other, I ſhall come* "*face to face with my oppreſſor, before a jury of my* "*country, where I ſhall have juſtice done;*" thoſe were the only conſolations which he had to make uſe of.

When the ſhip arrived at Whampoa, in China, it was neceſſary for Captain Churchill to prefer his complaint againſt Mr. Ryland, to the ſelect committee of ſuper-cargoes there; and I underſtand the ſuſpenſion *was not juſtified*; thoſe gentlemen ordered Captain Churchill to give the plaintiff his *privilege*; though he was not reſtored, he was to have *his right of carrying a certain quantity of merchandize for his own private trade*; the defendant refuſed; he would not receive it on board, except as the ſtores of the company; and the plaintiff was *obliged to pay one hundred pounds for that which he had* A RIGHT TO HAVE FREE.

Gentlemen, I have ſtated the ſubject of the plaintiff's caſe; and I have ſtated to you the facts, up to the time he was ſuſpended. I will call the witneſſes,

neſſes, *officers of the ſhip*, whoſe teſtimony *muſt* be relied on; and who will tell you that *there was no danger whatever from the conduct of the plaintiff*; I ſhall then leave it with you; and I have no doubt you will find your verdict for my client.

If on the other hand you ſhould find a verdict for the defendant, Mr. Ryland muſt go out of court with his character and fortune ruined. But you will exerciſe your judgment, and I ſhall make no farther obſervations.

Mr. THOMAS DOUGLAS BALDEY *ſworn.*

*Examined by Mr.* MINGAY.

Q. What ſtation had you on board the Walpole, the voyage when Mr. Ryland was ſuſpended?

A. I was midſhipman and Coxſwain, and made fourth mate in the Downs, on account of the third mate's having left the ſhip.

Q. When did ſhe ſail from Graveſend?

A. The 24th of March, 1789.

Q. Mr. Ryland was the chief mate?

A. Yes, Sir.

Q. In what manner did Mr. Ryland conduct himſelf?

A. In my opinion, as a ſeaman and an officer.

Q. Up to the time of the ſuſpenſion, had you obſerved any thing blameable or unworthy his ſituation?

A. No, Sir.

Q. In

Q. In what manner had Captain Churchill conducted himſelf?

*Mr. Bearcroft.* I object to any general account.

*Mr. Mingay.* I mean to examine this gentleman to facts, and they are to ſhew what paſſed.

*Mr. Erſkine.* I mean to contend that this is a charge for a "malicious ſuſpenſion," and every thing that goes to ſhew it muſt be produced.

*Mr. Mingay.* I mean to ſhew particular acts and expreſſions, not as to his general character, only to his particular ſituation.

Q. Will you be ſo good to ſtate when it was you diſcovered, what Captain Churchill ſaid or did, that led to the treatment of this gentleman, and how ſoon after you left Graveſend?

A. The day after the ſhip left Graveſend, as we were working down.

Q. What was it Captain Churchill ſaid of him?

A. Captain Churchill ſpoke to Mr. Ryland in a manner very improper, not becoming to an officer of his rank.

Q. What was it; what did he complain of?

A. About the running rigging.

Q. What was the fault?

A. With reſpect to the running rigging, the fore braces.

Q. Did he find fault with the manner of their being done?

A. Yes, Sir.

Q. Who was to do it?

A. The

A. The boatſwain.

Q. The commander had a right to find fault, though it was the duty of Mr. Ryland to ſee it was done right?

A. The boatſwain had done it by order of the ſecond mate, "Mr. Rutherfurd," who was commanding officer at that time.

Q. Was there any thing particularly obſervable that was very bad?

A. In overhauling the braces, they would not run through the ſheeves.

Q. In what manner did he complain, of the manner or of the thing itſelf?

A. Of the thing itſelf.

Q. What did he ſay?

A. I was buſy at the time; I heard Captain Churchill at high words with him about it.

Q. At any other time?

A. In April.

Q. From the time you heard this, and the beginning to complain, up to the time of the ſuſpenſion, did you hear any other expreſſions, which you recollect.

A. Often.

Q. What?

A. He found fault with Mr. Ryland.

Q. Now, in the inſtances in which he found fault with him, was there any reaſon?

A. Not in my opinion.

Q. Was

Q. Was that Captain Churchill's conduct to other people?

A. No, Sir.

*Mr. Bearcroft.* I object to that.

*Lord Chief Juſtice.* I muſt receive the evidence till it is explained.

*Mr. Erſkine.* I think it will be enough for me to ſhew, "this gentleman behaved particularly bad to Mr. Ryland," and that he ſuſpended him without cauſe.

*Mr. Bearcroft.* I object; I ſay it is not ſufficient, and you cannot examine the witneſſes to it.

*Lord Chief Juſtice.* From the nature of the cauſe, they may ſhew in general his conduct, and what was the cauſe of that ſuſpenſion; if you enter into the explanation, they will have an opportunity of anſwering it.

Q. Be ſo good to ſay, whether from the time that Mr. Churchill came on board the ſhip, up to the time of the ſuſpenſion, Mr. Ryland conducted himſelf as a dutiful ſeaman?

A. He did, Sir.

Q. Did you make any obſervation of any miſconduct of him on any occaſion?

A. No, Sir.

Q. On the day he was ſuſpended, on what account was it, what day was he ſuſpended?

A. The 20th of April, by the ſea log; I was then acting fourth mate.

Q. Where was the ſhip then?

A. Off

A. Off the Salvages.

Q. Where do they lay?

A. Off the Canaries.

Q. Was you preſent when he was ſuſpended?

A. No, Sir.

Q. What was the conſequence, who was appointed in his room?

A. Mr. Rutherfurd, ſecond mate; I was then acting fourth mate; I was made ſo in the Downs.

Q. What was Mr. Rutherfurd at that time?

A. He was ſecond mate.

Q. Do you know whether any application had been made for him to be firſt mate?

A. Yes, Sir,

Q. He was appointed firſt mate in the room of Mr. Ryland?

A. Yes, Sir.

Q. Do you remember what ſails you were carrying, at the time he was ſuſpended?

A. It was not my watch, I was not upon deck, all the ſails were ſet.

Q. What weather was it?

A. It was fine weather.

Q. You know, in point of fact, he was ſuſpended?

A. Yes, Sir; I was on the deck, I aſked the quarter-maſter where Mr. Rutherfurd was; he told me, in the round-houſe with Mr. Ryland and the captain.

Q. He was ſuſpended in fact?

A. He was.

Q. Was he continued in the ſuſpenſion?

A. He was.

Q. Was there any alteration made in his cabin?

A. There was.

Q. Was it enlarged or not?

A. It was leſſened.

Q. Where was it?

A. Before we got to Batavia.

Q. After the time that he was ſuſpended, and Mr. Rutherford made chief mate, was the ſhip continued with the ſame ſail as before the ſuſpenſion.

A. Yes, the ſail was the ſame.

Q. Did you learn what complaint had been made?

A. No, Sir.

Q. The cabin was leſſened?

A. The cabin was leſſened.

Q. I need not aſk you whether it was more inconvenient?

A. It was, Sir.

Q. He was continued ſuſpended?

A. He was.

Q. Till he arrived in England?

A. Yes, Sir.

Q. Was he ever reſtored to the ſituation of firſt mate?

A. He was not.

*Mr. Bearcroft.* Q. What was your ſituation on board?

A. I went on board as midſhipman and coxſwain.

*Mr. Mingay.* Q. Previous to the time of his ſuſpenſion,

ſuſpenſion, had you ever heard Captain Churchill hint any thing of the ſort?

A. I did, Sir.

Q. What was it?

A. As I was ſtanding on the ſtarboard ſide the orlop deck, abreaſt of the main-maſt, Captain Churchill ſaid he would ſuſpend him the firſt opportunity; that was on the 17th of April by the ſea log.

Q. On what occaſion was it?

A. As we were rouſing the cables over, from the larboard ſide to the ſtarboard, I heard Captain Churchill remark there was not dumage enough under the cables.

Q. Were they coiled as they ought to be, or as cables are in general?

A. I ſaw no fault in them.

Q. How long was this before the ſuſpenſion?

A. A few days.

*Croſs-examined by Mr.* BEARCROFT.

Q. You was midſhipman?

A. Yes, Sir.

Q. With the approbation of the commander?

A. Yes, Sir.

Q. You was appointed fourth mate in the Downs, and continued in that ſituation during the whole voyage?

A. I was acting third mate from the time Mr. Ryland was ſuſpended, till we arrived at China.

Q. The day the ſhip left Graveſend, you thought Captain Churchill ſpoke to the plaintiff in a very unbecoming manner?

A. Yes, Sir.

Q. You might be at that ſort of diſtance that you could not hear every word?

A. Yes, Sir; I was at that ſort of diſtance, I did not hear all.

Q. Therefore you could not hear perfectly what paſſed?

A. No, Sir, not entirely.

Q. Yet you have concluded he ſpoke in a very unbecoming manner?

A. Yes, Sir.

Q. There was ſomething wrong about the "rudder?"

A. No, Sir; about the braces.

Q. There was ſomething wrong about the running rigging?

A. There was.

Q. Did you ſee it?

A. Yes, Sir, I ſaw it.

Q. You ſay it was the boatſwain's buſineſs to do it?

A. Yes, Sir.

Q. But I would aſk you, is it not the buſineſs of the chief mate to ſee they do their buſineſs?

A. To

A. To be ſure it is. If there was any thing wrong, the boatſwain had done it, by order of Mr. Rutherfurd, the ſecond mate, he being commanding officer at that time.

Q. The thing was wrong, was it not?

A. The thing was wrong.

Q. You was at a diſtance, and you rather thought it was in an unbecoming manner Captain Churchill ſpoke to Mr. Ryland?

A. Yes, Sir.

Q. Now the next fact you ſpoke of, is about coiling the cables?

A. Yes, Sir.

Q. Was that on the 17th of April, when the captain came down and ſpoke about the dumage, or another time?

A. That was on the 17th of April, by the ſea log.

Q. On the ſame day?

A. Yes, Sir.

Q. Did you ſee the cables?

A. I ſaw them.

Q. You obſerved them.

A. I ſaw them.

Q. The captain pointed out the fault?

A. He did.

Q. What was it?

A. He ſaid there was too little dumage under them.

Q. The dumage is a ſort of bed?

A. Yes, Sir, billets of wood.

Q. He

Q. He found that fault?

A. He did.

Q. What was the anſwer Mr. Ryland gave?

A. Mr. Ryland was not there.

Q. Did you obſerve, and examine yourſelf, whether there was too little or not?

A. I have ſeen more; I did not attend particularly to it; I have ſeen more, and I have ſeen leſs.

Q. You ſay, at that time, he ſaid he would ſuſpend him the firſt opportunity; did he not at that time complain of other parts of his behaviour?

A. No, Sir.

Q. Did he not in general ſay, his behaviour had been ſo very bad, eſpecially of late, that he muſt ſuſpend him?

A. Not that I know of; Captain Churchill ſeldom talked to me.

Q. I aſk, at that time, whether he did not accompany that with a general complaint of his behaviour?

A. No, Sir.

Q. Did you hear him ſay that to any body?

A. No, Sir.

Q. I aſk, was Mr. Ryland a ſober man?

A. He was ſober while upon duty, and very attentive.

Q. By being on duty, do you mean while he was on watch?

A. Yes, Sir, while he was on duty in the ſhip, till his ſuſpenſion.

Q. I take

Q. I take it for granted then, that the firſt mate is always conſidered upon duty, when upon deck?

A. He is.

Q. Do you mean to ſay he was perfectly ſober when on deck?

A. Always.

Q. You never ſaw him drunk?

A. Never, till after the ſuſpenſion.

Q. Never till after the ſuſpenſion?

A. Never.

Q. Recollect yourſelf; was not you employed to get men on board the ſhip, by the captain?

A. I was, Sir.

Q. An addition to the crew?

A. Yes, Sir.

Q. I would aſk you, whether you did not ſay yourſelf, you could not procure men while Mr. Ryland behaved ſo?

A. I ſaid to Captain Churchill, I could not, becauſe the ſhip had got ſuch a name, upon account of Mr. Ryland's turning men out of the ſhip at Graveſend.

Q. Who turned them out?

A. Mr. Ryland.

Q. And in conſequence of that, you ſaid you could not get the men?

A. I did.

*Mr. Mingay.* Q. Pray, in doing this, was Mr. Ryland remiſs in his duty, or did he do right?

A. I

A. I think he did right.

Q. What did they do?

A. They refuſed to work in the rain.

Q. How many men did he turn out of the ſhip?

A. Nineteen men.

Q. Is not it a dangerous thing to take even one mutinous ſailor on board the ſhip?

A. To be ſure it is.

*Mr. Mingay.* To be ſure it is; as I quote the old ſaying, "One ſcabby ſheep mars the whole flock."

Q. Did you ever learn from Captain Churchill, whether he had ever made application for Mr. Rutherfurd to be chief mate?

A. Yes, Sir.

Q. What did he tell you?

A. I aſked him at the India Houſe, the day I ſhipped with him, if Mr. Rutherfurd was going in the ſhip? he ſaid Mr. Rutherfurd had applied for firſt mate, but a Mr. Ryland was appointed by the owners.

Q. During the whole courſe of the voyage, up to the ſuſpenſion, did you ever obſerve that Mr. Ryland neglected his duty, or behaved inſolent to the captain?

A. Never.

Q. Was he not as diligent as was neceſſary?

A. He was as diligent as any man I ever ſaw.

Q. Did you know Mr. Ryland?

A. I

A. I never had ſeen him to my knowledge, before I went on board the ſhip; I have no particular partiality for either of them.

Q. At the time the ſuſpenſion took place, did Captain Churchill ſummon the officers together, to take their judgement?

A. Mr. Rutherfurd, ſecond mate; Mr. Truſon, the ſurgeon; and Dormer, the purſer, were preſent.

Q. There was not the general call of officers?

A. No, Sir.

Q. Was you preſent?

A. I was not.

Q. What other officers were preſent?

A. There were none but Mr. Rutherfurd, Mr. Truſon, and Dormer; the third mate was ſick; I was acting as fourth mate, and upon deck at the time. Captain Churchill came on deck, and told me he had ſuſpended Mr. Ryland, and I was to go below, and take charge of the next watch.

Q. Some of the officers on board the ſhip were appointed by the owners?

A. Yes, Sir.

Q. Did you ever hear what his conduct was towards them?

A. No, Sir, I do not recollect hearing.

## Mr. ESSEX EDGEWORTH *ſworn.*

*Examined by Mr.* GARROW.

Q. What ſituation was you in on board the Walpole?

 A. I went

A. I went on board the ſhip as ſixth officer, and did duty from that ſtation to the third.

Q. I believe, before you left Graveſend, one of the officers left the ſhip?

A. Yes, Sir; the third officer run the ſhip, and was reported to be drowned.

Q. Of courſe you roſe?

A. No, Sir, there was no regular promotion then.

Q. What was the name of that officer?

A. Mr. William Lay.

Q. You know Mr. Ryland?

A. Yes, Sir.

Q. From the time of leaving Graveſend, what was his conduct as an officer?

A. The moſt attentive officer I ever ſaw (very able, as far as I am capable of judging) and that was the opinion of all who I have heard ſpeak of him.

Q. I will aſk you, whether till the time of his ſuſpenſion, you ever ſaw him drunk upon duty?

A. Never.

Q. Did you, till his ſuſpenſion, ever hear any complaint of that ſort made by Captain Churchill againſt him?

A. Never, Sir.

Q. You remember the time of that ſuſpenſion?

A. Perfectly well, Sir.

Q. Was you upon deck at the time he was ſuſpended?

A. No, Sir.

Q. Are you enabled to ſtate what courſe the ſhip was in?

A. Yes,

A. Yes, Sir.

Q. What ſort of weather was it?

A. Very fine weather.

Q. You were carrying a preſs of ſail; how was the wind?

A. We were going before the wind.

Q. After he was ſuſpended, were the ſame ſails ſet as were taken in upon his ſuſpenſion?

A. They were ſet again; the ſtudding ſails were taken in upon the ſuſpenſion, and ſet again immediately.

Q. Who was the officer that ſucceeded to Mr. Ryland's ſituation?

A. Mr. William Rutherfurd.

Q. How ſoon after did Mr. Rutherfurd reſtore the ſails to the ſame ſtate they were in before?

A. I cannot exactly tell that; I do not know how long; as ſoon as the appearance of the ſquall was over.

Q. How long might this dreadful ſquall continue?

A. For a few minutes, Sir.

Q. Was there any danger, if the ſame ſail had been kept during the ſquall?

A. I ſhould ſuppoſe not, it being ſo moderate.

Q. It was a ſail that your judgement would not have made you take in?

A. Some trifling thing might poſſibly have been carried away.

Q. Was there any general ſummons of the officers of the ſhip, to conſider of that ſuſpenſion?

A. I never heard of any other than Mr. Rutherfurd, Mr. Truſſon, the ſurgeon, and Mr. Dormer, the purſer, being preſent, the captain's meſſmates.

Q. They were to decide on the diſplacing that chief officer?

A. There were no other.

Q. Were any officers aſſembled to differ from the doctor and purſer?

A. No, Sir.

Q. No defence was entered into?

A. No, Sir, I never heard of any.

Q. From this time, Mr. Ryland continued ſuſpended?

A. Yes, Sir.

Q. Do you know, Sir, of any loſſes to which Mr. Ryland was ſubject?

A. Many.

Q. Be ſo good to deſcribe them?

A. He not having the opportunity of taking care of his own privilege, and his ſtores in the ſhip, it prevented him from ſelling his merchandize ſo well as he could have done.

Q. Can you tell us, Sir, when his cabin was reduced?

A. I cannot tell the time; it was in very diſagreeable weather, Sir; he loſt conſiderably by it.

Q. How long was it after the ſuſpenſion?

A. I cannot

A. I cannot tell; I never kept any minutes of what paſſed between them.

Q. After the ſhip had been at Whampoa, did you hear the captain ſay any thing about the conduct of the plaintiff?

A. I did, Sir.

Q. You had ſome officers appointed by the captain, and ſome by the owners?

A. Half by the captain, and half by the owners.

Q. Of thoſe who were appointed by the owners, was Mr. Ryland one?

A. Yes, Sir.

Q. What was ſaid by Captain Churchill about Mr. Ryland, individually?

A. Mr. Ryland was put in the ſhip by the owners; and Captain Churchill ſaid that he ſhould have a very diſagreeable voyage of it, he knew.

Q. Was this before the ſuſpenſion of Mr. Ryland?

A. Long before.

Q. Who was one of thoſe appointed by himſelf?

A. Mr. Rutherfurd; he told me he was very much diſappointed in Mr. Rutherfurd not being appointed his chief mate; there were the firſt, fourth, and fifth put in contrary to his deſire; that the voyage would be very diſagreeable; that he would ſuſpend the chief officer the firſt opportunity, and that he was not fit company for him.

Q. Was this before you left Graveſend?

A. Yes, Sir.

Q. You

Q. You never ſaw any neglect of duty in the conduct of Mr. Ryland?

A. Never, Sir.

*Croſs-examined by Mr.* BOWER.

Q. Tell me what Mr. Churchill did to prevent Mr. Ryland diſpoſing of his trade?

A. It was occaſioned by that ſuſpenſion.

Q. Was he kept on board the ſhip?

A. No, Sir, he was not.

Q. Was he on board the ſhip four or five hours after her arrival at Batavia?

A. I do not recollect; I cannot ſpeak to the time.

Q. As near as you can?

A. I cannot recollect.

Q. Was he on ſhore the firſt day?

A. I cannot recollect whether he went on ſhore the firſt day or not.

Q. You cannot ſay whether he went on ſhore the firſt two days?

A. Upon my oath, Icannot ſay.

Q. You cannot ſay he did not go on ſhore as ſoon as you arrived?

A. I cannot ſay that he did.

Q. Take a little time: you have talked a great deal about this?

A. I cannot ſpeak to the time; I do not recollect to a day or two days.

Q. Then you do not know any thing about it?

A. I know he was on ſhore, but not when he went.

Q. Do

Q. Do you know he was prevented one minute?

A. No, I do not.

Q. Was any one thing kept on board the ſhip?

A. There was, Sir: caſks of porter, ale, and many things.

Q. You have ſworn juſt now—tell me again—I aſk it of you again, whether any one part was kept on board at Batavia?

A. There was.

Q. Tell me what?

A. Several things; there was a prow came along-ſide for Mr. Ryland's goods, and turned adrift.

Q. When was that?

A. I cannot recollect the time, Sir. Mr. Wemys, the commanding-officer's, letters (as orders from the captain) will ſhew it.

Q. How long after you had been at Batavia?

A. I cannot tell.

Q. How long might it be before ſhe came back again, and took every thing off he wanted?

A. I do not know.

Q. Captain Churchill kept thoſe things on board, and would not let them go?

A. I do not know he ever ordered them to be kept on board.

Q. How do you mean he prevented him from ſelling thoſe goods?

A. For two reaſons; the commanding-officer told me—

[*Here the counſel would not permit the witneſs to explain.*]

Q. Do

Q. Do not tell me what the officer told you?

A. Then I cannot tell you.

Q. Then you know nothing about it? Was that boat employed upon any other ſervice than carrying away Mr. Ryland's goods?

A. No, Sir.

Q. What time did it come?

A. Early in the morning; before we began to work.

Q. Was you on board the ſhip before ſhe ſailed?

A. I was.

Q. Was you there at the time ſhe was paid off?

A. No, Sir, I was not on board that day.

Q. Previous to the time at which ſhe was paid, do you mean to tell us, Mr. Ryland was a ſober, regular officer?

A. I never ſaw him drunk, off or on duty, before his ſuſpenſion; and know him to be a vigilant, ſober, and attentive officer.

Q. You never ſaw him drunk?

A. Never, before his ſuſpenſion.

Q. He behaved as a diligent officer?

A. I always thought ſo and heard ſo.

Q. There was no alteration in his conduct, you thought, neceſſary?

A. I did not know of any.

Q. You do not know of any now?

A. No, Sir.

Q. Nor

Q. Nor had any occaſion to obſerve any in the voyage?

A. No, Sir.

Q. Was there any complaint made in your hearing, of ſeveral things being wanting?

A. I did not hear of any complaints.

Q. Is it the cuſtom of the captain, to be talking to the fifth and ſixth mates, about the conduct of the principal officer?

A. It was frequently the caſe with Captain Churchill.

Q. Before this cabin which you ſpeak of, was reduced, had there been any riots in that cabin?

A. I wiſh to recollect; I do not recollect any thing that happened in the cabin.

Q. Not any thing in the cabin?

A. Nothing in the cabin, concerning it; there was a complaint which was done away.

Q. How done away?

A. Being proved erroneous on a hearing before the captain.

Q. How was that proved?

A. To the ſatisfaction of the captain.

Q. How long after?

A. I cannot tell; I never made any minutes.

Q. You had the misfortune to have two or three of your ribs broke in it?

A. There might be; the ſurgeon told me there was; and he was a better judge.

Q. You was very much bruiſed?

A. I did not perceive I was; the ſurgeon ſaid I had a rib or two broke.

Q. Was that in the diſpute between Mr. Ryland and you?

A. I cannot ſpeak to that buſineſs, as I was much intoxicated at the time (likewiſe once beſides) the only times I ever was in liquor on board ſhip; and was informed it was by an accidental fall my ribs were broke, as my brother officers who are now in court can prove.

Q. There is a privilege belonging to the chief mate?

A. Yes, Sir, I know there is.

Q. Had the plaintiff not the privilege allowed him by the company, coming home?

A. It was ordered by the ſupercargoes.

Q. Then he had it?

A. No, Sir, he paid freight.

Q. He had the privilege on board?

A. He had not the privilege; he had the quantity of goods, but not the privilege; he paid the freight.

Q. Was he prevented at any other place?

A. Not to my knowledge.

Q. Now, at the time this happened about the ſails, I would aſk you, did not the captain order the ſails to be taken in?

A. I do not know whether he did or not; I was below, it not being my watch on deck.

Q. When you came on deck, to ſee whether the ſails were taken in, the ſquall was over?

A. I did

A. I did not come for that purpoſe.

Q. You do not know the ſame ſails were carried?

A. I do know they were.

Q. You do not know whether he took in thoſe ſails?

A. I do not exactly know.

Q. Have you had any diſpute, or has the captain reprimanded you during the courſe of the voyage? I am obliged to put the queſtion. Were you not publicly reprimanded for fighting and getting drunk?

A. No, I never was; I was very much encouraged by Captain Churchill for my conduct.

Q. You never was reprimanded by Captain Churchill?

A. Yes, Sir; but always before I parted with Captain Churchill, on a hearing of any complaint made againſt me, he acknowledged he was wrong-informed, complimented me, and I always withdrew with the greateſt eclat.

Q. Then I aſk you whether this conduct was followed up to the ſatisfaction of Captain Churchill?

A. Always; I ſhould ſuppoſe ſo from the conduct of Captain Churchill to me.

Q. Who was preſent when Captain Churchill expreſſed himſelf ſatisfied; do you mean to ſay he ever did ſo?

A. Yes, Sir.

Q. Who was there?

A. I cannot exactly ſay.

Q. Tell me who was there?

A. I do not ſay he preciſely ſaid he was ſatisfied, but from his conduct which I obſerved towards me, I was convinced of it.

Q. Then I underſtand you, your evidence is this, that after you had been reprimanded, he treated you with civility?

A. I am very clear of that, and with his approbation of my conduct.

Q. Have you not been reprimanded by Captain Churchill for miſconduct?

A. I don't recollect being reprimanded but once, as before mentioned.

Q. I will put you in mind?

A. I have a very bad memory.

Q. I will put you in mind; you remember the time when the cabin was reduced?

A. I recollect it was reduced.

Q. Now then, take a little time to anſwer, whether you was not reprimanded, the night before that, for fighting upon deck?

A. No, Sir.

Q. And not for having got drunk, and fighting in the cabin?

A. Never, Sir; it never was mentioned to me.

Q. You are ſure of the one, but are not ſure of the other?

A. I recollect being ſpoke to, for ſtriking a man on the deck, but not fighting; the captain told me,

if I

if I attempted to ſtrike any man in the ſhip, he would ſuſpend me immediately, as he would never ſuffer a man in his ſhip to be ſtruck by any officer.

Q. Who was it you ſtruck?

A. The gunner, I puſhed forward, and ordered him round to his ſtation.

Q. He was an officer in the ſhip?

A. Yes, Sir, he was. I was reprimanded for ſtriking him, but I had not ſtruck him, I only puſhed him to his ſtation; and he was ſtrictly defired to obey my orders afterwards, by Captain Churchill, at the ſame time ſaying he would break him, if he did not obey me in future, or ever made a like complaint of me.

Q. You remember the time before, the night before the cabin was reduced; was you not reprimanded for getting drunk in the cabin?

A. I was not.

Q. Was you not reprimanded for ſtriking an officer?

A. I don't recollect.

Q. Do you recollect being reprimanded for ſtriking an officer?

A. I don't recollect.

Q. Do you recollect being reprimanded for ſtriking Mr. Wemyſs?

A. We ſtruck each other by mutual agreement.

Q. Do you mean to ſay, that paſſed off too, and that you was not reprimanded for ſtriking your ſuperior officer?

A. That

A. That was a private buſineſs between us.

Q. Was you reprimanded for it?

A. Never, Sir; I was commended for it.

Q. Who commended you for it?

A. Captain Churchill, ſo far as to approve of my conduct, when he underſtood what occaſioned it.

Q. You mean to ſtand to that?

A. Yes, Sir: I don't know that he particularly approved of my ſtriking him, but he approved of my conduct throughout, in the buſineſs.

Q. Don't you know he diſapproved of it?

A. No, Sir; he never ſaid he did to me, nor in my hearing: from his manner of behaving to me, he approved of my conduct, on a hearing before my brother officers.

Q. But after that he treated you with civility?

A. Always, Sir; ever acknowledging me attentive to my duty, and ordered me to do the third officer's duty after the diſpute.

*Mr. Garrow.* My learned friend has taken a great deal of pains to ſhew you deſerved to be ſuſpended;—you never was?

A. Never, Sir.

Q. Do I underſtand you right—the loſs of the goods of the plaintiff was occaſioned by the ſuſpenſion?

A. Yes, Sir, it was.

Q. If he had not been ſuſpended, no ſuch objection would have ſtood in his way?

A. None, Sir.

Q. Were

Q. Were his goods ſold firſt?

A. I don't know; the captain's and purſer's were on ſhore before his.

Q. His would have come earlier into the market?

A. Yes, Sir.

Q. With reſpect to the privilege, and the quantity of goods, which he would have had as chief mate, were they received on board?

A. Yes, Sir.

Q. Were they received as the chief mate's?

A. No, Sir.

Q. Did the commanding officer ſay that his privilege was on board, and refuſe to receive it on board?

A. He ſaid the chief mate's privilege was on board, meaning Mr. Rutherford's. Captain Churchill likewiſe objected, and ſaid the chief mate's privilege was on board.

Q. He paid the freight for the privilege, which otherwiſe he would have had freight free?

A. Certainly, Sir.

*Mr. Bower.* Q. You have now ſworn, that Mr. Ryland could not ſell his goods till the purſer and captain had ſold theirs: will you take upon you to ſwear, they were not ſold before the captain's?

A. No, Sir.

Q. Do you not know, that in fact they were ſold before the captain's?

A. I do not.

Q. Nor for a better price?

A. For a better price I know they were.

Q. Were

Q. Were they ſold to the ſame advantage they would have been, if he had not been ſuſpended?

A. They were not, nor any thing like it.

Q. Tell me how you know that?

A. From the merchants telling me?

Q. Then you know nothing of it yourſelf?

A. No, Sir, no more that what I have heard.

Q. You know nothing of it, of your own knowledge?

A. Only what I heard: I was not the merchant that purchaſed, therefore can only tell you what they informed me.

Mr. FRANCIS HAMILTON WEMYSS *ſworn.*

*Examined by* Mr. ERSKINE.

Q. Who was you appointed by?

A. By Mr. Durand.

Q. He is one of the owners?

A. Yes, Sir.

Q. Where did you come on board the ſhip?

A. At Deptford.

Q. Do you know Mr. Ryland, the plaintiff?

A. Yes, Sir.

Q. He was the firſt mate?

A. Yes, Sir.

Q. Had you any opportunity of obſerving his conduct on board the ſhip, till the time of his ſuſpenſion?

A. Yes, Sir.

Q. What was his conduct during that period?

A. He acted like an officer and a ſeaman.

Q. Did

Q. Did you obſerve any inſtances of miſconduct?

A. No, Sir.

Q. Was he ſober?

A. He was, to my knowledge.

Q. Up to the time when he was diſmiſſed the ſtation?

A. Always.

Q. Did you ever ſee him in the courſe of the voyage, while he had the charge upon him, in liquor, and unable to perform his duty?

A. Never.

Q. Did you ever ſee one inſtance of miſbehaviour?

A. No, Sir.

Q. Do you remember the time when he was ſuſpended?

A. Yes, Sir.

Q. What was you?

A. Third mate.

Q. Where was you?

A. In my cabin.

Q. Was you ill?

A. I was.

Q. Was you ſo ill as not to be able to leave your cabin?

A. No, Sir.

Q. Was you ſo well, if the Captain had deſired your attendance, could you have attended?

A. Yes, Sir.

Q. Do you recollect what ſort of weather it was?

A. Not particularly, becauſe I was below.

Q. Was you ſent for by the Captain, upon account of Mr. Ryland's ſuſpenſion?

A. Yes, Sir, I believe I was, after it took it place.

Q. Had you been ſummoned at any time, to conſult whether it was proper?

A. No, Sir.

Q. Were the officers aſſembled?

A. Not to my knowledge.

Q. Who came for you at the time he was ſuſpended?

A. It was after his ſuſpenſion.

Q. Who came?

A. I don't know, I believe it was one of the midſhipmen.

Q. However, Captain Churchill ſuſpended Mr. Ryland?

A. He did, Sir.

Q. Tell us whether you heard any thing of it, till after it had taken place?

A. No, Sir.

Q. He had no reſpect ſhewn him, and he could give no command?

A. No, Sir, not in the leaſt.

Q. He was ſent down to his cabin, and was a mere private man in the ſhip?

A. Yes, Sir.

Q. Do you recollect his cabin being taken down?

A. Yes, Sir, I remember it being reduced.

Q. At what time?

A. A conſiderable time after the ſuſpenſion.

Q. Was the room that was taken away given to any body elſe?

A. No, Sir, it was not.

Q. Do you know of any inconvenience Mr. Ryland ſuffered?

A. He ſuffered very great inconveniences from not having a place to keep his things.

Q. Was he ever reſtored again?

A. No, Sir.

Q. Do you know what he paid for the freight of his goods home?

A. No, Sir.

Q. Previous to the time when this gentleman was ſuſpended, did you ever hear any expreſſions made uſe of about him.

A. No, Sir.

*Croſs-examined by Mr.* LAW.

Q. Was you on board, the 24th of March, 1789?

A. I was, Sir.

Q. Did you obſerve Mr. Ryland that day?

A. No, I did not, during the duty of that day, I was in my ſtation, I did not obſerve him.

Q. You ſay, Sir, that to the beſt of your knowledge, he was always ſober on duty?

A. Yes, Sir.

Q. Then you know he was drunk, when he was off duty?

A. No, Sir, never to my knowledge.

Q. Has not he, as chief mate, a truſt upon him at all times?

A. Yes, Sir.

Q. Do you not know he was drunk with the witneſs that was laſt examined, before the ſuſpenſion?

A. Never, to my knowledge.

Q. Do you remember any ſquabble between him and the witneſs Mr. Edgeworth?

A. No, Sir.

Q. Don't you know of his getting drunk with him?

A. Yes, twice, Sir, I think.

Q. Do you know of any ſquabble on deck with him?

A. No, Sir.

Q. There was a battle between you and Mr. Edgeworth?

A. Yes, Sir.

Q. How came that?

A. I don't know how.

Q. Was he drunk then?

A. Yes, he was, I believe.

Q. Do you know of any inſtance of Mr. Edgeworth being reprimanded?

A. Not before me.

Q. Do you know the iſland—the reef of rocks, called the Salvages?

A. Yes, Sir, I do.

Q. Are they not very dangerous?

A. Yes, Sir, they are.

Q. You

Q. You was by them about the 18th or 19th of April?

A. Yes, Sir.

Q. Every officer thinks it his duty to look out for them?

A. Yes, Sir.

Q. You would think him guilty of a great breach of duty, if he neglected it?

A. Yes, Sir.

Q. Should he not go forward to the forecaſtle to do it?

A. If he had no other officer under him?

Q. And ought not he to be there, when he could beſt obſerve whether thoſe rocks were clear of the ſhip or not?

A. Yes, Sir.

Q. Did Mr. Ryland ever go forward to the forecaſtle to look at the compaſs?

[*This created a general laugh.*]

*Mr. Erſkine.* Q. Was you upon deck ſoon after the time this gentleman was ſuſpended?

A. I came up at the time of the ſuſpenſion, or a little time afterwards.

Q. What was the weather when you came up, a little after?

A. It was miſty weather.

Q. What diſtance was you from the land?

A. I don't know; but by my journal, which will ſhew it?

Q. Studding ſails were ſet on both ſides?

A. Yes,

A. Yes, Sir.

Q. Which could not be attended with any danger?

A. No, Sir.

Q. What diſtance was you from any rocks?

A. I cannot ſay, without I was to look at the journals?

Q. Had you not the whole ſea at your option?

A. Certainly, Sir.

Q. Did the Captain give any directions to keep a look out for the rocks, and was he refuſed?

A. I don't know.

Q. Suppoſe a veſſel carried her ſtudding ſails, and that the wind comes in a puff, what is the greateſt conſequence?

A. It may ſplit a ſtudding ſail, or carry away ſome trifling thing.

Q. Did you ever ſee a ſquall, that came before a ſtorm, that you had not time to take in your ſtudding ſails?

A. No, Sir, unleſs it was a very heavy ſquall.

Q. Have you not ſeen it happen to the moſt diligent officers, a ſtudding ſail being carried away by the wind ſhifting?

A. Yes, Sir.

Q. Is it the duty of an officer to look for inviſible rocks?

A. No, Sir.

*Mr. Law.* Q. I aſk you no queſtion about the ſails, or rocks that were not above water, or whether

it

it was the duty of an officer to look for invisible rocks—are they not very visible?

A. Yes, they are, Sir.

Q. Is it not the duty of an officer to look for them?

A. Certainly, Sir.

Q. They were quite visible, were they?

A. Yes, Sir.

*Mr. Erskine.* Q. When you come near a reef of rocks, or the land, is it not customary to have a man to look out, and to shorten sail?

A. Yes, Sir.

Q. Is it not the custom to have a sailor aloft, to look out?

A. Yes, Sir.

## CHARLES VAUGHAN *sworn.*

*Examined by Mr.* MINGAY.

Q. What was you on board the Walpole?

A. I was boatswain, Sir.

Q. You know Mr. Ryland?

A. Yes, Sir.

Q. Do you remember the time of his suspension?

A. I do, Sir.

Q. At the time he was suspended, had he done any thing amiss in the ship, that you observed?

A. Not to my knowledge.

Q. Now, from the time he went on board the ship, till the time he was suspended, did he conduct himself very properly?

A. In

A. In my opinion he did, with every degree of propriety becoming an officer and a ſeaman.

Q. You never ſaw him drunk before he was ſuſpended?

A. Not before his ſuſpenſion.

Q. Did you ever hear him miſbehave himſelf, or ſpeak rudely to the Captain?

A. No, Sir.

Q. There was no ground for the ſuſpenſion, according to your judgment?

A. Not from my experience upon the ſea.

Q. In ſhort, you obſerved no one act that deſerved ſuſpenſion, as an officer and a ſeaman?

A. No, Sir.

*Croſs-examined by Mr.* BEARCROFT.

Q. Did you ever hear any converſation between him and the Captain?

A. No, Sir.

Q. You did not obſerve any thing about it?

A. No, really I did not: that is the amount of my evidence.

Q. Will you venture to go ſo far as to ſay, you never ſaw him drunk before the ſuſpenſion?

A. I never ſaw him drunk but once, and that was a conſiderable time after the ſuſpenſion.

Mr. ALLEYNE COPPARD *ſworn.*

*Examined by Mr.* GARROW.

Q. What was you on board the Walpole?

A. Midſhipman. Q. Do

Q. Do you remember the time of the ſuſpenſion of Mr. Ryland?

A. I do, Sir.

Q. Was there any thing to juſtify that?

A. I have been but one voyage at ſea, therefore know but little of ſeamanſhip.

*Mr. Bower.* Q. You was in the law, was you not?

A. I was in the law?

*Mr. Garrow.* Then I will aſk you nothing more.

*Mr. Mingay.* Mr. Coppard, by the rules of the court, you cannot be examined.

*Mr. Bower.* Q. *(Shewing Mr. Coppard a letter)* Is that your hand-writing?

A. Yes, Sir.

Q. Then I dare ſay, what you have ſaid in this letter of Mr. Ryland is true.

A. I dare ſay it is.

*Mr. Erſkine.* Mr. Coppard, you ſhould have gone to ſea before you followed the law.

A. I wiſh I had.

[*Unfortunately for the plaintiff the court could not examine this witneſs.*]

## EPHRAIM ANDERSON *ſworn.*

*Examined by Mr.* GARROW.

Q. You was quarter-maſter.

A. Yes, Sir, I was.

Q. Did you happen to be upon deck, when Cap-

tain Churchill came up, and ſaid he had ſuſpended Mr. Ryland.

A. Yes, Sir.

Q. Was you at the helm?

A. No, Sir; I was at the conn.

Q. You was directing the ſteerage?

A. Yes, Sir, I was.

Q. That is your duty?

A. Certainly, Sir.

Q. To ſee the ſhip is ſteered properly?

A. Yes, Sir.

Q. You being at the conn (of courſe conning the ſhip) you muſt have had occaſion to examine the ſtate of the ſails at the time?

A. Yes, Sir.

Q. What ſail had you? was you before the wind?

A. Yes, Sir.

Q. Do you recollect what ſort of weather it was?

A. Little wind.

Q. How was the ſea?

A. Smooth.

Q. Was there any ſquall?

A. There happened to be a little ſquall?

Q. Did that ſquall come on very ſuddenly?

A. It did, Sir.

Q. Did you ſee any negligence in Mr. Ryland, who was the officer of the watch?

A. No, Sir, I did not.

Q. How long have you been at ſea?

A. I have been twenty years.

Q. Then

Q. Then you muſt be a pretty good judge, whether the officer, Mr. Ryland, knew what ſail the ſhip could carry?

A. Yes, Sir.

Q. Was he guilty of any negligence?

A. No, Sir, he was always attentive to his duty.

Q. Do you remember Captain Churchill's coming upon deck?

A. I cannot ſay I do.

Q. Do you remember Mr. Ryland being ſuſpended?

A. Yes, Sir.

Q. Was you on deck when he was?

A. Yes, Sir, I believe I was.

Q. Did you hear what he ſaid?

A. No, Sir.

Q. Did you ſee any blame in him?

A. No, Sir, I did not.

Q. Was any of the ſails taken in when the captain came on deck?

A. That I know nothing of.

Q. Suppoſe a little ſquall of that ſort happens, and the ſtudding ſails are ſet, what is the utmoſt damage done to a ſhip, is there any thing carried away but that ſail?

A. No, Sir, nothing but the ſtudding ſail, and perhaps a ſmall boom or yard.

Q. Was there a boom or yard broke?

A. No, Sir, there was not.

Q. Then you ſaw no harm in this gentleman?

A. He always attended his duty?

Q. He always did his duty like an officer?

A. Yes, Sir, he always did it as an officer ought to do.

Q. If he had been drunk, muſt you not have obſerved it?

A. Certainly, I ſhould have ſeen it.

Q. Were there any complaints in the ſhip?

A. Not to my knowledge, Sir.

Q. How long had you been quarter maſter in the ſhip?

A. I was ſhipped as quarter maſter.

Q. How many months was it before ſhe got to Whampoa?

A. I really don't know, I never kept a journal.

Q. It was five or ſix months, I believe.

A. I don't know.

Q. He had no reſpect paid him, I ſuppoſe, after this?

A. No, Sir, not after the ſuſpenſion, he was not looked upon as a gentleman, or an officer belonging to the ſhip.

*Croſs-examined by Mr.* LAW.

Q. At the time you, as quarter maſter, was on deck, I aſk you if Mr. Ryland had any people on deck to take in the ſails?

A. We had the watch upon deck, and they are the people who uſually take in the ſails.

Q. Were they ſufficient?

A. The

A. The watch was ſufficient.

Q. Did not the Captain deſire him to take in the ſails?

A. I don't know that the captain ordered it?

Q. Was you not near enough to hear what he ſaid?

A. I never heard him ſay ſuch a word.

Q. Did you hear him ſay it was time enough?

A. I did not.

Q. What was you doing?

A. I was doing my duty.

Q. Was you not watching your compaſs?

A. I was, Sir.

Q. How near were you?

A. Perhaps the length of the court.

Q. Who was on deck at the time, and heard what paſſed?

A. I don't know, I did not particularly obſerve.

Q. You had an accident at China?

A. I don't owe Captain Churchill the leaſt ill-will for any misfortune that happened me there.

Q. Was you not flogged at China?

A. If I was, I forget and forgive.

*Mr. Garrow.* That I ſubmit has nothing to do with this caſe.

*Mr. Law.* Q. Was you not flogged at China?

*Mr. Garrow.* I object to that.

Mr.

Mr. SAMUEL LEE *ſworn.*

*Examined by Mr.* GARROW.

Q. What ſituation did you fill on board the Walpole?

A. Midſhipman, Sir.

Q. You ſailed from the river with the ſhip?

A. Yes, Sir.

Q. You remember the time when Mr. Ryland was ſuſpended?

A. I do, Sir.

Q. Was you on deck?

A. No, I was not.

Q. From the time you ſailed, to his ſuſpenſion, how did he conduct himſelf?

A. He conducted himſelf as an officer and a ſeaman.

Q. Did you obſerve any neglect of duty?

A. I did not.

Q. Did you obſerve any want of ſkill?

A. No, I did not, Sir.

Q. Did you ever ſee him drunk while he did duty on board?

A. I did not, Sir.

Q. How long have you been at ſea?

A. I have been at ſea ten years.

Q. Did you ever ſee a better officer?

A. No, Sir.

Mr.

## Mr. ROBERT GRIBBLE *ſworn.*

*Examined by Mr.* ERSKINE.

Q. In what ſituation was you on board the Walpole?

A. Surveyor.

Q. Did you ſail in the ſhip?

A. As far as the Downs, and no further.

Q. Did you obſerve how Mr. Ryland conducted himſelf at Graveſend, where he had the command of the ſhip?

A. According to the beſt of my knowledge, I always thought Mr. Ryland behaved himſelf as he ought, becoming a chief officer.

Q. How long have you been ſurveyor?

A. I have been eight years in the places of company's ſurveyor and extra ſurveyor: I don't know I was a day out of the ſhip, from the time I went on board, till I left her in the Downs.

Q. When you ſailed round to the Downs was the captain on board?

A. Yes, Sir—ſometimes Mr. Ryland had the command, and ſometimes Mr. Rutherfurd; they took it by turns.

Q. Did Mr. Ryland behave himſelf properly?

A. I always underſtood he did, as a ſeaman and an officer.

*Croſs-examined by Mr.* BEARCROFT.

Q. He behaved very generouſly to the officers of the cuſtoms?

A. There

A. There was no cuſtom houſe officer on board.

Q. Did you never ſee him drunk?

A. I never did.

Q. Was he not a jolly fellow?

A. I don't know what you mean by a jolly fellow.

*Mr. Erſkine.* We have done.

*Mr. Bearcroft.* May it pleaſe your Lordſhip. Gentlemen of the Jury. I am of counſel for the defendant, Captain Churchill, with reſpect to whom my learned friend, as counſel for the plaintiff, has expreſſed himſelf in a very handſome manner. But I am perſuaded there is nobody that has heard him to day, but muſt have obſerved in every word of his argument, a very great regard for my client. In the firſt place, he told you Captain Churchill is a gentleman of family and fortune—but don't we know that the word "fortune" was to catch your ear, and to let you know there was an exceeding good purſe to reſort to.

Gentlemen. The captain has been a ſailor for four and twenty years, and ſpent the greateſt part of his life in the ſervice of the Eaſt India Company, and for three voyages he has been captain of this ſhip, called the Walpole Indiaman; and I will call gentlemen of the firſt character and reputation in the profeſſion of the ſea, who will bear teſtimony to his general good character as an officer.

Gentlemen. The cauſe you have to try to day, is certainly of ſome importance with reſpect to the parties, and with reſpect to the public. This and

every

every cauſe of the kind, permit me to make the obſervation, and I am ſure it cannot be made too frequently, is of the utmoſt importance indeed, that ſailors and petty officers ſhould be encouraged by the verdict of juries, and that the diſcipline of the merchant's ſervice, the commerce of this great country, the ſafety of the lives of the ſubjects, which depend entirely upon due ſubordination, ſhould be attended to, and from the conſequences of not doing that, we have had melancholy inſtances, I mean the Groſvenor and the Halſewell.

Gentlemen, With great ſubmiſſion, I will take the liberty to ſtate to you, what I conceive to be incumbent on the plaintiff to prove in this caſe.—I ſay it is not enough to prove, that the defendant has ſuſpended him from his place, which he has authority to do; but he muſt ſhew, he did not do that, for the exerciſe of diſcretion, thinking he did right, and for the purpoſe of proper puniſhment, but that he did it of his own malice, and without any plauſible reaſon whatever. If I miſconceive that this ſort of proof is neceſſary for the party complaining, to ſhew it was founded on malice, I ſhall be ſet right by his Lordſhip.

My learned friend has taken a great deal of pains to get at every information, and he has (to uſe a ſea phraſe) ſtretched forth all his ſtudding ſails to catch every breeze. And not contented with that great portion of eloquence which belongs to him, he has choſen to quote an abſent friend of ours, and make

uſe of the expreſſion, of the " ſilent hour of night," and of a " wounded ſpirit," and I recollect it had a wonderful effect upon the jury, as I was of counſel in that caſe, and it is upon the record we ſucceeded upon the part of the defendant.

Gentlemen, I thought it was as well to guard you againſt that, and you muſt do as wiſe men before you have done, fix yourſelves upon the merits of the evidence alone.

The firſt witneſs that is called is Mr. Thomas Douglas Baldey; and I am ſure when you come ſeriouſly to examine his evidence, you will find it is very looſe.—He tells you, the day they left Gravesend the captain ſpoke to the plaintiff in an unbecoming manner; it is of great importance, that you ſhould have ſeen what ſort of language it was; but when I aſked him what paſſed, he ſaid there was ſome fault found about ſome of the ropes, and that it was the boatſwain's buſineſs; but he allows it was the plaintiff's buſineſs to ſee the boatſwain did his duty (on my croſs-examination.)—What does this amount to? If he could not judge of it, you will judge of it, who only heard it through his means. It proves that while there is a cauſe between a captain and his mate, there always will be enough to aſſiſt him.

He tells you, he has often heard the defendant find fault with him when there was no reaſon, and as an inſtance he ſays, the captain found fault with him becauſe there was not dunnage enough under the

the cables, and that he, the witneſs, was of opinion, there was enough, but that he had ſeen more, and he had ſeen leſs.—I ſhould be glad to know, whether you ſee any thing wrong in finding fault with the plaintiff.—I truſt you cannot.

The only witneſs that can poſſibly be material for the plaintiff is the ſecond witneſs, I mean Mr. Edgeworth, and as to him, he was diſpoſed to do that, which it is the wiſh of every witneſs to do—You obſerved the manner in which he anſwered my learned friend.—You are the beſt judges, whether you feel a diſpoſition to believe him to the full extent of his evidence. I know him not; I ſay nothing of his character, and of courſe I am not called to obſerve upon them.—I call upon you to recollect the obſervation you muſt have made at the time he was giving that evidence, that for a conſiderable time you were to underſtand the plaintiff was at a great loſs by his ſuſpenſion, from not having an opportunity of taking care of his own trade.—It turns out he proves nothing of the ſubject;* and I beg leave to claim the advantage of that, as all the witneſſes remain totally ſilent on that head. This, Gentleman, had, as I will ſhew, and put it out of all queſtion, the full advantage of ſelling, and of bringing home thoſe goods which he had a right to bring.

With reſpect to another part of Mr. Edgeworth's evidence, he tells you, and it is worth your atten-

* Mr. Edgeworth was not permitted to *mention* Mr. Ryland's loſſes.

tion, that the defendant ſaid, he ſhould have a diſagreeable voyage of it, for that the plaintiff and ſome others were put in by the owners—That he was much diſappointed in not having Mr. Rutherfurd—That he would ſuſpend the chief officer the firſt opportunity, for that he was not fit company for him. There is not tittle of this ſort of evidence that comes out of the mouths of any other witneſs except Mr. Edgeworth.—Let me appeal to common ſenſe, and aſk, could Captain Churchill be ſuch a fool as to tell almoſt every man about it?—That he ſhould tell men about it who were intereſted.—For, gentlemen, you muſt know a word more or leſs, in converſations of that kind, may overturn the whole.

Gentlemen, I am come now to ſome general obſervations.—My learned friend ſays—What gentleman or father will ſend a ſon into this ſervice, if, when he comes abroad, he is to receive this treatment from a ſuperior officer? Let me put *this queſtion*, what gentleman or father would ſend his ſon, or who will enter into this kind of buſineſs, if after he has got to the top of his profeſſion he is to be torn to pieces by the inſolence of an inferior officer, and afterwards to be brought into a court of juſtice?—think of that caſe, and then judge.

I put ſome queſtions to the witneſſes on the part of the plaintiff, to ſhew that Mr. Ryland was a drunken man; the anſwer was, "*he was not drunk upon his duty*, to the beſt of my belief;"—does not that admit that he was a drunken man? and being the firſt mate of a ſhip he was always upon duty;

and

and I have no difficulty to ſay, that, if he was in the habit of drunkenneſs, that was a ſufficient cauſe of ſuſpenſion. And I ſhall prove to you, that even in the river Mr. Ryland was exceſſively drunk, and that he was forced to be turned out of the room, and he ſubmitted to it. You will find, and it will be proved by and by, that on the 24th of March, the day the men were paid their river pay, a day of all others it behoves the firſt mate to be ſober, that very day he himſelf was exceſſively drunk, and incapable of looking out; and, I underſtand, at various other times I ſhall be able to ſhew he was drunk. Thoſe inſtances of provocation not being taken notice of by my client, was a proof that he was diſpoſed to live with this gentleman, while there was a chance of his doing his duty properly. I ſhall ſhew he was guilty of negligence, upon which the captain remonſtrated with him, and that the evidence in favour of the plaintiff is not ſo ſtrong as you would expect. And I ſhall be able to call to you witneſſes, who will tell you, that from time to time Captain Churchill told him, "Sir, if you go on in this way, it will be impoſſible for me to go the voyage with you, I muſt ſuſpend you, if you do." With reſpect to the ſquall and the ſails being taken in, it will be proved to you, the captain ſaid "here is a ſquall coming on, ſome of thoſe ſails muſt be taken in." I underſtand that to be the fact; but beſide that I ſhall prove to you his anſwer, and that he treated him with contempt, and ſaid, that "he knew his buſineſs

as

as well as he," which language is not to be endured—I ſhall prove to you, that on the 19th of April, which was the day of his ſuſpenſion, that the captain during the whole of the watch did, as he was frequently forced to do, give the watch to an inferior officer, when it was the plaintiff's buſineſs to do it himſelf; for upon that day they were going before the wind, and I underſtand from thoſe who are well ſkilled in ſea affairs, that too great a precaution cannot be uſed. Gentlemen, I will prove to you, that the captain, on the 19th of April, kept the watch with Mr. Ryland the plaintiff, all the whole four hours; and it is the duty of the officer of the watch to ſee whether the man was upon the forecaſtle to keep the look out. The captain obſerved, that the mate, Mr. Ryland, never offered (as it is the duty of an officer ſtationed upon the deck, when a man is upon the forecaſtle) to ſtep and ſee that he did his duty, for, unleſs that is done, thoſe who have the command will never be able to do juſtice. I will produce to you witneſſes that were preſent, and who will tell you, Captain Churchill ſaid, "I am ſorry to ſay if you go on in this manner, I ſhall be forced to ſuſpend you, take notice, Sir, this is the laſt time I ſhall ſpeak to you on this ſubject." What was the anſwer? Was it even ſaying nothing? It was inſulting, not even civil, that might have been paſſed by—The anſwer inſult—inſtead of ſaying, "Sir, I am obliged to you for your forbearance," he ſaid nothing of the kind, but held him at defiance.

Gentle-

Gentlemen, if you ſhould be of opinion that Captain Churchill has gone a little further than he ought to have done, you muſt be ſatisfied it was out of a miſtaken notion, and not from premeditated malice.

You are poſſeſſed of the nature of the caſe, and you will find the plaintiff was negligent, and upon that ground the captain was obliged to ſuſpend him.—He was ſuſpended, and the cabin, which was above the ſize it ought to be, was reduced, as the captain had a right to reduce it, becauſe the ſize of the cabin encumbered the place.

I ſhall ſay no more upon the part of the defendant, than that this proſecution is founded upon malice. If you ſhould be diſpoſed to find a verdict for the plaintiff, then the only queſtion will be with reſpect to the damages, and I cannot help obſerving, that when you give your verdict, you will keep in your mind, there is no juſtice without moderation.

WILLIAM DORMER *ſworn.*

*Examined by Mr.* BOWER.

Q. I underſtand you are the purſer on board the Walpole?

A. I am, Sir.

Q. What time did you go on board?

A. The 29th or 30th of March.

Q. Where was the ſhip?

A. In the Downs.

Q. From the time you came on board, did you make

make any obſervations on the conduct of Mr. Ryland?

A. I did, Sir, after ſeveral remarks were made to me by Captain Churchill.

Q. What obſervation was it you made, as to his general conduct; was he an attentive, ſober, diligent officer?

A. He was by no means ſo attentive, nor ſo diligent, as any other officer in the ſhip; I obſerved once in particular.

Q. When?

A. I cannot tell the day, ſome four or five days after we had ſailed, the ſhip was before the wind, Mr. Ryland ordered the people to haul in the lower ſtudding ſails, the people were then at work in the waiſt, and Mr. Ryland ſaid, "haul aft the lower ſtudding ſail tack."—"Sir, we are hauling aft."

Q. Do you recollect any thing happening ſhortly after the ſquabble, about what you call Bentick ſhrouds, what are they?

A. They are ſhrouds that go from one ſide of the ſhip to the other; right acroſs the ſhip.

Q. Do you know any thing reſpecting the Bentick ſhrouds?

A. Captain Churchill ordered Mr. Ryland to ſet up the Bentick ſhrouds, and Mr. Ryland replied, they were of no ſervice; he ſaid, he had ſeen many good ſhips go to ſea without them.

Q. After this had you any occaſion, at any other time

time to be preſent at any converſation between Captain Churchill and Mr. Ryland?

A. I know Captain Churchill has admoniſhed him to alter his conduct, and told him, it did not become an officer or a ſeaman, and he muſt put ſomebody in his room.

Q. What anſwer was given?

A. He told him he had once commanded as good a ſhip as he, and knew his duty as well.

Q. Was he ſubmiſſive?

A. No, offending.

Q. Had thoſe remonſtrances been one, two, or three times?

A. Twice, before he was ſuſpended.

Q. Do you recollect the time he was ſuſpended?

A. Yes, Sir.

Q. Do you know how far you was from the Salvages?

A. Yes, Sir; eight or nine leagues.

Q. Who had the night watch?

A. Mr. Ryland.

Q. What hours?

A. From eight to twelve. I obſerved that during the four hours, part of which I walked upon deck with Captain Churchill, Mr. Ryland was by no means ſo diligent as he ought to be: Captain Churchill remarked to me, he could not go to bed while ſo careleſs a man was left upon deck.—He then went forward himſelf to look out; and then he came upon the quarter-deck again, and ſaid, "My

God! Mr. Ryland, can I truſt the ſhip with you, you have not been once forward."

Q. Did you ſee him go forward?

A. I did not obſerve him go forward all that time: Mr. Ryland ſaid, "Have you not an officer forward keeping a good look out?"

Q. After this kind of anſwer did Captain Churchill remonſtrate any further with him?

A. This was the laſt time before the ſuſpenſion.

Q. Now then give us an account of the time when he was ſuſpended?

A. Captain Churchill called him into the cuddy, and reprobated his conduct, and ſuſpended him; he told him that he was no longer chief mate of the Walpole, but that Mr. Rutherfurd was; he ſaid, "I am quite tired."—Mr. Ryland ſaid, "very well, Sir, there is juſtice for me as well as you."

Q. You was on board the ſhip when ſhe got to Batavia?

A. I was, Sir.

Q. Did Captain Churchill object to Mr. Ryland taking on ſhore any thing?

A. Never; on the contrary he had his goods, and they were ſold for the ſame money, and I believe for more; they was ſold to the very ſame perſon—Some of them was weighed by Captain Churchill's own weights and ſcales.—I believe he was on ſhore all the time.

Q. When you came home was Mr. Ryland's goods taken on board or refuſed?

A. They

A. They were all taken on board.

Q. Now as to this cabin, do you remember the time when the cabin was reduced after his ſuſpenſion?

A. Yes, Sir.

Q. Do you remember upon what occaſion it was reduced?

A. The captain ſent for him to his cabin, and remonſtrated with him, and adviſed him to live a ſober life.—We heard frequent noiſes; and Captain Churchill ſent for him, and adviſed a more ſober conduct.—After Mr. Ryland's cabin was reduced, nobody had the uſe of that part of it.

Q. After the cabin was taken away was there any means taken to prevent throwing his things about?

A. They were left in a very careleſs manner.—I offered to take a book of charts into my cabin, and it was refuſed.

Q. Had he an opportunity of taking care of thoſe things?

A. I don't know whether he had an opportunity, or had any place to put them, but I offered to take ſome, and it was refuſed.—The day after he was ſuſpended it was my order to the ſteward to ſupply him with wine and wax candles.

Q. Was ſuch attention paid to him?

A. Yes, Sir.

Q. Had he them ſupplied from the captain's table?

A. Yes, Sir.

Q. Do you remember what language Mr. Ryland uſed to Captain Churchill at the time of ſuſpending him?

A. He told him he was as good a ſeaman as he, and knew his duty as well.

Q. Was it ſpoke reſpectfully or otherwiſe?

A. In a very careleſs manner.

*Croſs-examined by* Mr. ERSKINE.

Q. In the firſt place, do you know Mr. Vaughan?

A. Yes, Sir, I do.

Q. The perſon who has attended this cauſe and been examined?

A. Yes, Sir.

Q. Was you ſent by the captain to Mr. Vaughan?

A. No, Sir.

Q. Did you go to him of your own accord?

A. I met him.

Q. I will put this plump at once—did you not ſay, that if he did not attend this cauſe as a witneſs for Captain Churchill it ſhould be worſe for him?

A. No, Sir.

Q. Nor any thing to that effect?

A. I adviſed him to act as an honeſt man.

Q. Next, Sir, did you write any letter by the Albion Indiaman to any body, when you ſpoke her?

A. Yes, Sir; I did to ſeveral.

Q. Did you happen to expreſs yourſelf, that you thought Mr. Ryland was a good officer, but that Captain Churchill was prejudiced againſt him?

A. I

A. I don't know that I did—whatever I wrote, that went by the Albion, was wrote in the ſpace of a quarter of an hour.

Q. Will you ſwear that you did not write, that Mr. Ryland was a good officer, and Captain Churchill had an antipathy againſt him?

A. I won't ſwear to any thing that I wrote by the Albion.

Q. If the courſe of your obſervation, up to the time that this unfortunate gentleman was ſuſpended, was, that he was neglectful of his duty, and no ſeaman, how is it poſſible, whether you was in a hurry or not, you ſhould write that he was a good officer?

A. I won't ſwear to one circumſtance that I wrote by the Albion.

Q. Did you write to your wife?

A. Yes, I did.

Q. If you knew Mr. Ryland was a negligent man, how could you write that he was a good officer?

A. I will not ſwear that I wrote a letter by the Albion.

Q. Will you ſwear you did not write a letter by the Albion? Juſt now you told me, you was a quarter of an hour writing a letter?

A. No, Sir, I will not ſwear that.

Q. I aſked you firſt, as to the contents of the letter you wrote by the Albion, and now you tell me, in a moment afterwards, you don't know you wrote by the Albion; upon your oath did you not write by the Albion?

A. Yes,

A. Yes, Sir, I did—From the manner in which you interrogate me I don't underſtand myſelf.

Q. You will not ſwear you did give this character of Mr. Ryland, writing home to this country?

A. No, Sir.

Q. Will you ſwear you did not write ſo of Mr. Ryland?

A. No, Sir, I will not ſwear it.

Q. Will you deny it?

A. No, Sir.

Q. Then I take it for granted you did. Did you write on the ſubject of Mr. Ryland at all?

A. No; I don't know I mentioned his name.

Q. Did you not write to your wife?

A. I don't know I wrote ſuch a thing to my wife.

Q. You was the purſer on board, who was to take care of the proviſions, to ſerve butter, cheeſe, mouldy buiſcuits, ſlops, and ſo forth?

A. I was the purſer.

Q. When you went on board in the Downs the captain directed you to make your remarks towards Mr. Ryland?

A. Yes, Sir.

Q. The captain did?

A. Yes, Sir.

Q. Then it was he that firſt led you to remark Mr. Ryland?

A. Yes, Sir.

Q. Soon after you delivered the diſpatches, the captain ordered you to remark Mr. Ryland's conduct?

A. He did.

Q. Who

Q. Who might be the party in the cuddy?

A. Mr. Rutherfurd, Mr. Truſſon, and myſelf.

Q. Mr. Rutherfurd is the gentleman that Captain Churchill recommended?

A. I don't know.

Q. You have no reaſon to know, that Captain Churchill ever wiſhed Mr. Rutherfurd firſt mate?

A. No.

Q. You have no reaſon to know it?

A. I did not know, it became a part of my profeſſion and buſineſs.

Q. Did you never hear him ſay ſo?

A. He may, but I don't recollect it.

Q. Will you venture to ſwear he did not ſay ſo?

A. It is very likely he did ſay ſo; it is moſt natural he had a *partiality* for Mr. Rutherfurd, from his having been two voyages with him before—I cannot ſwear it.

Q. You never heard him expreſs it?

A. I never heard him ſay he wiſhed Mr. Rutherford was chief mate.

Q. A moment ago you ſaid you would not ſwear?

A. I will ſwear to what I know, from the beſt of my knowledge.

Q. One day, when you was going before the wind, which is more than you do now, you heard Mr. Ryland ſay, "haul aft the lower ſtudding ſail tack"?

A. Yes, Sir.

Q. Was you upon deck?

A. Yes, Sir.

Q. What

Q. What became of the mouldy biſcuits, and all that below?

A. I had nothing to do with the biſcuits then.

Q. Upon which ſome of the people hallooed out, "We are drawing and knotting yarns;" upon which he ſaid, "It will not take you a moment."

A. Yes, Sir.

Q. You mean to ſay, if he had been a good officer, and the men were placed to draw and knot yarns, that it is not common for an officer to take men from their work, without he ſets them to do ſomething elſe?

A. No, Sir.

Q. Becauſe no man, if he had been a proper diſciplinarian would do that?

A. No, Sir.

Q. With reſpect to the Bentick ſhrouds, Mr. Ryland ſaid they were of no uſe?

A. Yes, Sir.

Q. You ſay you have often known Mr. Churchill ſend for the plaintiff in the cuddy, and charge him with various acts of inattention?

A. Yes, Sir.

Q. Upon which he always denied theſe acts?

A. Yes, Sir.

Q. Who was there at the time of the ſuſpenſion?

A. Mr. Rutherford, Mr. Truſſon, and me.

Q. How ſoon did you know, before he was ſuſpended, that he would be ſuſpended?

A. I did not know any thing about it.

Q. Did you think the captain would have kept his word?

A. I did not think about it.

Q. When

Q. When you was about nine leagues from the Salvages, you obſerved Mr. Ryland was not ſo attentive as you could wiſh?

A. Not ſo attentive as, I ſuppoſe, an officer ſhould have been.

Q. Is there any other fault you find with him, except Mr. Ryland was not ſo attentive as you thought, and did not go forward?

A. No, Sir.

Q. I will read your words, you ſaid you were "eight or nine leagues from the Salvages, and that Mr. Ryland was not ſo attentive as you could wiſh."

A. He was not ſo attentive as Mr. Rutherford would have been.

Q. Will you be ſo good to tell us what he had left undone?

A. That I cannot ſay.

Q. When you come to make a charge upon an officer, I call upon you to ſay what was wrong, and you ſay you cannot tell?

A. Mr. Ryland walked fore and aft, and did not ſeem to have any anxiety upon his mind, inſtead of going forward; Captain Churchill went forward himſelf.

Q. Mr. Purſer, how do you walk on board—athwart ſhips? I ſuppoſe the captain wanted Mr. Ryland to walk down the hatchway, and break his neck?

*Mr. Bower.* Q. What I want to know is, what Mr. Ryland ſaid at the time you was walking the deck?

A. I have ſaid already, that Captain Churchill aſked him, "Can I leave the ſhip in your care, when I have been walking the deck two hours, and you have not been once forward?"

Q. What ſaid Ryland?

A. Mr. Ryland turned about in a careleſs manner, and ſaid "Is there not an officer forward?"

*Mr. Erſkine.* Q. The captain ſaid "Can I leave the ſhip in your charge?"—had he ever aſked him to go forward?

A. No, Sir.

Q. Are you a ſeaman—I am told you have kept a gin ſhop before you turned purſer?—Why do you draw back, what are you afraid of? anſwer me that laſt queſtion.

A. No, I did not, it was for my father-in-law.

Q. Don't tell me of your father-in-law—You kept a gin-ſhop?

A. Yes, Sir, I was in the brandy trade.

Q. Well then, a brandy ſhop; you failed, left your creditors, turned purſer, and there was an end of your gin-ſhop—is it not ſo?

A. Yes, Sir.

*Mr. Erſkine.* I think you are a contemplative gin-man.

JOHN DEAN SCARNETT *ſworn.*

*Examined by Mr.* LAW.

Q. You was on board the Walpole?

A. Yes, Sir.

Q. Do you remember Mr. Ryland ever being drunk?

A. Yes, Sir.

Q. Do you remember any particular time?

A. No particular time.

Q. Was it more than once?

A. More than once, twice or thrice, or a dozen times; I have ſeen him ſo bad he could not ſit in his chair.

Q. Has

Q. Has he ever aſked you to come into his cabin to drink?

A. Yes, Sir.

Q. Did you ever go?

A. No, Sir.

Q. Did you ever ſee him turn any man out of the ſhip?

A. Yes, Sir, I remember the time very well, he turned ſeveral men out of the ſhip.

Q. What number was it?

A. About ſixteen or ſeventeen.

Q. Do you remember the day when the men had their pay, on the 24th of March?

A. Yes, very well, Sir.

Q. Was he drunk or ſober?

A. That I cannot ſay, Sir.

Q. You did not take notice?

A. I did not take any notice.

Q. Do you recollect any handſpikes belonging to the ſhip, which you ſhould have had with you, but you had not?

A. They were left behind.

Q. Whoſe buſineſs was it to have ſeen they were there?

A. The commanding officer's.

Q. What was the plaintiff's conduct on board the ſhip, from that time up to his ſuſpenſion?

A. I cannot ſay he was a ſober man.

Q. You have ſeen him frequently drunk?

A. Yes, I have.

Q. When he had the command of the ſhip?

A. I have ſeen him drunk at ſea.

*Croſs-examined by Mr.* MINGAY.

Q. What are you?

A. Gunner's mate.

 Q. Where

Q. Where do you belong to now?

A. To the ſhip.

Q. You hope ſo.

A. If I can get a better ſituation, I will.

Q. What were thoſe men turned out of the ſhip for?

A. They were turned out, Sir, becauſe they would not hoiſt a few caſes of copper; they told Mr. Ryland to ſtop till the rain was over.

Q. You think they would have been of great uſe?

A. We cannot do without them.

Q. Were thoſe juſt the ſort of men you wanted?

A. They were very good men: they ſaid, Mr. Ryland had better ſtay till the rain was over.

Q. Yes; very good men indeed, to dictate to their commanding officer. You have ſeen him drunk?

A. I have ſeen him drunk, Sir.

Q. Who was in company?

A. Mr. Coppard.

Q. Was he the only man that was drunk?

A. Yes, Sir; I ſaw the cuſtom houſe officer, that has got a blink eye, drunk too.

Q. Where did you get the handſpikes afterwards?

A. A man brought them on board in a boat.

Q. Did you tell the captain?

A. No, Sir, the captain knew when he came along ſide.

Q. Did you tell the captain you ſaw him drunk?

A. No, Sir, I had no buſineſs with it.

*Mr. Law.* Did you make any ſecret of it?

A. Every body on board the ſhip knew it as well as I did.

*Mr. Mingay.* You never ſpoke of it to any body?

A. No, I never did.

Q. It is no uncommon thing to ſee a ſailor drunk?

A. No, Sir.

JOHN

JOHN EVERREST *ſworn.*

*Examined by Mr.* BALDWIN.

Q. What was you on board the Walpole?

A. Midſhipman, Sir.

Q. You know the plaintiff on board this ſhip?

A. Yes, Sir, of courſe.

Q. When did you go on board?

A. I don't know the day.

Q. During the time you was on board, did you ever ſee the plaintiff before his ſuſpenſion in liquor?

A. Yes, Sir.

Q. More than once?

A. I have ſeen him more than once.

Q. Frequently?

A. I ſaw him more than once; I have ſeen him twice, Sir, drunk.

Q. Where was it?

A. At Graveſend.

Q. Do you remember the day when the ſhip's company were paid?

A. Yes, Sir.

Q. Is that a day when the attention of the officers is particularly required?

A. Yes, Sir.

*Croſs-examined by Mr.* GARROW.

Q. How long have you ceaſed to belong to her?

A. Since June.

Q. Have you not brought an action againſt the preſent plaintiff?

A. No, Sir, I never had the idea.

Q. Do you mean to ſwear you never brought an action againſt Mr. Ryland, upon your own account, or at the inſtigation of the defendant?

A. No, Sir.

Q. You

Q. You don't know any ſuch action is brought in your name?

A. No, Sir.

Q. You never ſaid that it was?

A. Never.

Q. You was examined, was you not, at Whampoa?

A. Yes.

Q. Upon the ſubject of Captain Churchill's objections to Mr. Ryland?

A. Yes.

Q. Not upon oath?

A. No.

Q. Upon your oath, Sir, have you not ſaid, that what you ſaid before that court you did not ſay upon oath, and therefore might ſay any thing?

A. That would lay at my option.

Q. My queſtion is this, have you not ſaid, that the evidence you gave before the committee of ſupra cargoes, was not upon oath, but that you would not give the ſame evidence in an Engliſh court of juſtice, upon your oath, or any thing like it?

A. Thoſe are two different things.

Q. Tell us what you may have ſaid?

A. I don't know that I ever ſaid any thing of the kind; what I mean to ſay is, I ſhould conceive I had not a right to ſay ſo much here as I did there.

Q. Why is it, that you would not wiſh to ſay ſo much againſt Mr. Ryland here?

A. Becauſe I might not be ſo collected in my ideas.

Q. Then you mean now diſtinctly to ſwear, that you have never ſaid, that you gave that evidence there, becauſe you was not upon oath?

A. I will not ſwear it.

Q. Don't you know you did ſay that?

A. No,

A. No, I don't recollect.

Q. Will you ſwear it?

A. I don't recollect any particular converſation.

Q. Did you not ſay, you ſaid more then, than you dared ſay in England?

A. Never; I never did.

Q. You never ſaid ſo to Mr. Coppard?

A. No.

Q. Had you any converſation with Mr. Coppard about it?

A. Yes, Sir; I ſpoke to Mr. Coppard yeſterday; and I can ſwear till before yeſterday I never ſaid ſo.

Q. What did you ſay yeſterday?

A. I ſaid, I could not ſay ſo much before this court as I did in China, becauſe I did ſuppoſe I muſt be more ſerious and collected in what I did ſay, than when I was there.

Q. Did you not ſay, Mr. Ryland's character depended upon it?

A. No, Sir.

Q. Did you not know that Captain Churchill inſiſted he would not come home a paſſenger?

A. No.

Q. Did you not know your evidence was to all theſe points?

A. No, Sir.

Q. What did you think you was examined for?

A. I did not give myſelf a thought about it.

Q. A pretty fellow you are, not to give yourſelf a thought about a buſineſs you ſpoke ſo much of, to take away the character of a gentleman. Did you not ſay to any body, that you was obliged to give your evidence for Captain Churchill, for if it had not been for him you muſt have ſtarved?

A. Never; I never did ſay ſo.

Q. You

Q. You have ſaid, that your whole dependance in life was on Captain Churchill?

A. I have ſaid ſo an hundred times, that my whole dependance and expectations in life were upon Captain Churchill.

Q. Did you never ſay to any body, before the ſuſpenſion of Mr. Ryland, that he would not be long chief mate, as he was a man that Captain Churchill did not like?

A. No, Sir.

Q. Did you never ſay that Captain Churchill intended to make Mr. Rutherfurd chief mate?

A. No, Sir.

Q. That you are poſitive of?

A. I muſt be poſitive.

Q. Do you mean to ſay you are poſitive?

A. I am poſitive.

*Mr. Garrow.* I think you are a poſitive gentleman.

Mr. JOHN DELL *ſworn.*

*Mr. Law.* Pleaſe your lordſhip, this gentleman has an impediment in his ſpeech.

Q. You are midſhipman?

A. Yes, Sir.

Q. You know Mr. Ryland, who was your chief officer?

A. Yes, Sir.

Q. Was he always drunk, or ſober?

A. I have ſeen him in liquor.

Q. Where?

A. At Graveſend.

Q. Have you ſeen him at any other time?

A. Yes, Sir.

Q. Was that before the ſuſpenſion?

A. After.

Q. You

Q. You never told Captain Churchill what you ſaw?

A. No, Sir.

Mr. RUTHERFURD *ſworn.*

*Examined by* Mr. LAW.

Q. You was ſecond mate on board the Walpole?

A. I was, Sir.

Q. You remember Mr. Ryland?

A. Certainly I do.

Q. Did you ever obſerve him to be in liquor?

A. Yes, Sir, after I left Graveſend, I obſerved him in liquor, on the day the people of the ſhip were paid.

Q. Do you remember his behaviour; was it the conduct of a diligent officer, or the contrary?

A. I thought it was the conduct of a negligent officer.

Q. Do you recollect on the 19th of April, there was a ſquall?

A. Yes, Sir.

Q. Did you ſee the ſails that were up?

A. I believe all the ſails were ſet.

Q. Was you preſent when the converſation was held about taking in the ſails?

A. I was not by then; it was not my watch.

Q. Was you by the night before, when the captain kept watch?

A. No.

Q. Do you know what diſtance you then were from the Salvages? are thoſe a very dangerous ſet of rocks?

A. Yes, Sir, very dangerous.

Q. Is it the duty of the officer who attends, to look out?

A. It is, Sir, of all the officers I ever ſaw.

Q. Suppoſe the captain had been upon deck at that time, would he have diſpenſed with it?

A. The captain has nothing to do with it.

Q. If there is any other officer on the forecaſtle, is that ſufficient?

A. I never truſted to any other man; I always looked myſelf.

Q. You remember his being at Batavia?

A. I do, Sir.

Q. Do you recollect of his diſpoſing of any part of his goods?

A. Yes, Sir.

Q. Was he prevented from having them?

A. No, Sir.

Q. Do you know when he went on ſhore?

A. No, Sir.

*Croſs-examined by* Mr. ERSKINE.

Q. You kept the journal?

A. I did.

Q. By your journal, how far was the ſhip from the Salvages?

A. No great diſtance.

Q. Can you gueſs at the bearings?

A. No.

Q. Having the wind fair, the deuce is in it if you do not take care to have good ſea-room?

A. A man wiſhes to go as near to his courſe as poſſible, to ſhape ſuch a courſe.

Q. You would not run in upon a lee ſhore?

A. No man in his ſenſes would do that; the Salvages could not poſſibly be a-head.

Q. You have a pretty good time-piece on board?

A. We had none that I know of.

Q. You had no reaſon to ſuppoſe the land was a-head?

A. God

A. God forbid it was.

Q. You had no idea it was?

A. No.

Q. Had any body been talking about the Salvages?

A. When a ſhip is running paſt an iſland, we generally keep a good look out.

Q. Had any body been talking about them?

A. I do not recollect.

Q. Is it common to have more than one officer upon the forecaſtle at a time?

A. It depends entirely upon the officer.

Q. Do you mean to ſay it is neceſſary, if there is one officer forward, for the other officers going forward?

A. No, Sir, I do not know it is.

Q. You ſucceeded to this gentleman's birth?

A. Yes, Sir.

Q. You never applied to be firſt mate, nor the captain for you?

A. No, Sir, I never thought of applying to be firſt mate or ſecond mate.

*The Hon.* THOMAS ERSKINE *in Reply.*

[*Here alſo the Short-Hand Writer was very inſufficient in the rapid and ſublime elocution of Mr. Erſkine's ſpeech, in reply.*

Gentlemen of the Jury. I was told, in the opening of this cauſe, that I had expreſſed myſelf with regard for ſome perſons particularly concerned. My learned friend ſays very truly; and the only reaſon, Gentlemen, was this; becauſe there may be ſome perſons to whom Captain Churchill may be related, for whom I have a great reſpect. I now come forward to do that duty which I have in part done already, and which in no part I will leave unfiniſhed,

if I can avoid it, that the public may be protected, and this gentleman have ſatisfaction for the injuries he has ſuſtained. I ſhall obſerve very freely on the defendant and the evidence he has produced, becauſe by the laws of England we are entitled to it on the part of the gentleman who has fallen a ſacrifice to malice, for which there is no colour. My learned friend ſays, in his defence, the plaintiff was guilty of negligence and inattention, and thereby the defendant was warranted in his act. I ſay, Gentlemen, when a man brings an action, and ſtands for juſtice in a court of law, it is for him to prove that that act was without cauſe and without foundation; which I truſt, in this caſe, we have done.

Gentlemen; I ſay, and I agree, with Mr. Bearcroft, if a man inſults his ſuperior officer, and that officer takes upon himſelf to ſuſpend him without a cauſe, it is the duty, and the moſt ſolemn duty, of a jury, to acquit him with honour. On the other hand, where a captain takes upon himſelf to wound, oppreſs, and diſtreſs an officer in every way, and that officer is obliged to call him into a court of juſtice, in order to anſwer for it—I ſay it imports the public at large, that you ſhould give exemplary damages in ſuch an inſtance. If you do not, I aſk you what man of ſenſe, character, and family, will put himſelf under the command of a man, who threatens to ſuſpend him, and who does ſuſpend him, and when he comes into a court of juſtice to anſwer it, is not able to ſhew a ſingle inſtance of neglect of duty as a ground to entitle him to a verdict.

Gentlemen. The only perſon on the part of the defendant that deſerves the name of a witneſs is Mr. Rutherfurd, who tells you he "has ſailed two voyages with Captain Churchill, and that he has no

reaſon

reaſon to believe he applied for him to be his firſt mate; that the ſhip ſailed as it was the common courſe of ſailing; and that Mr. Ryland was ſuſpended, and he ſucceeded him:" that is the whole length to which his evidence goes.

Gentlemen. The firſt thing for me to do, is to ſhew how I made out the motive which I charge the defendant to have had, to induce him to conduct himſelf in the manner he has towards this gentleman.

Firſt of all, I ſhall go to the evidence of that bold, poſitive, and daring witneſs, Dormer, whoſe evidence, in my opinion, confirms that on the part of the plaintiff, and ſpeaks ſtronger than ten thouſand tongues could upon the ſubject.

Firſt, with reſpect to the letter he wrote by the Albion—Gentlemen, it muſt be apparent to every body—

*Lord Chief Juſtice.* You had a right to aſk Dormer all the queſtions you aſked him—You had no right to give any account of Mr. Rutherfurd.

*Mr. Erſkine.* I will make myſelf underſtood—I mean to ſtate the croſs-examination of Dormer with reſpect to the letter he wrote by the Albion—It is upon that I mean now to obſerve.

*Lord Chief Juſtice.* Certainly that is right.

*Mr. Erſkine.* Moſt undoubtedly all I meant to ſay is this; it muſt be apparent to every body, that this man (and ſo far I have a right to make the obſervation), if he had not been conſcious of the truth of what he ſaid with reſpect to my client in that letter, why would he have denied it? I aſked him, "Did you write a letter by the Albion Eaſt-Indiaman?" Says he, "I did." "Did you not write that Mr. Ryland was a good ſeaman, but that Captain Churchill was prejudiced againſt him?" His anſwer was, "I don't know, for I wrote a letter in

leſs

leſs than a quarter of an hour;" he ſays, "I was in a hurry." Then he tells you, "he did not write at all by the Albion;" and juſt before he ſaid he "was a quarter of an hour writing." From this, *what opinion can you entertain of this witneſs?* Whether he was in a hurry, or whether he was not, it was impoſſible for him to write a ſentiment which in his own conſcience he muſt know to be falſe. Without taking up your time, that is all the obſervation I mean to make on this letter. My learned friend, with an air of triumph, ſaid, that "I had but one witneſs in fact to ſupport my cauſe"—If that had been the caſe, he has taken care amply to ſupply it by the evidence he has brought. But it will appear I had more than one; and that one poſitive witneſs would be ſufficient, if I had but that one.

Gentlemen. I will now give you the evidence of a gentleman, with reſpect to whom I did not hear one material obſervation made by Mr. Bearcroft; and you will recollect, I am come with an action for damages, and I muſt have my client reinſtated to the utmoſt extent poſſible; which, as men of honour, you will think he ought to be. Mr. Baldey ſays, "I ſaw the captain, and he made an obſervation about the cables; and the defendant ſaid he would ſuſpend Mr. Ryland the firſt opportunity." Says he, "thoſe cables were ſtowed properly; but I have ſeen more dunnage, and I have ſeen leſs." So that you ſee the defendant was fiſhing for an opportunity to remove this gentleman; that he ſaid in his own mind, "*I will ſeize the firſt opportunity to get rid of this man; I will ſuſpend him,* THOUGH I HAVE NO GROUND FOR SO DOING." Does it not ſhew, at that time, *that he was reſolved to* WATCH *this gentleman,* and take the firſt opportunity to remove him? Gen-

Gentlemen. A man in this ſituation is a man going out an abſolute ſacrifice. The captain determined to remove him, having a regard for another perſon; and in this perilous ſituation, the plaintiff, unknown to himſelf, an innocent perſon, is to put himſelf to be waſted and affected in his health, and injured in his character and reputation, and all from THE PREMEDITATED SCHEME OF THE CAPTAIN, *before he had an opportunity of ſeeing what the conduct of the plaintiff really was*; for, as it has been ſtated to you, the ſuſpenſion took place within eleven days after the ſhip left the land.

Mr. Edgeworth tells you—" I heard Captain Churchill ſay, that Mr. Ryland had been put in againſt his wiſh, and that he ſhould have a diſagreeable voyage of it." This is *before the ſhip ſailed, before any one act of negligence*, which the defendant lays as the ground of this ſuſpenſion, took place. This he ſays to Mr. Edgeworth, an officer on board, whom my learned friend croſs-examined, and aſks, " Was you not drunk at ſuch a time? Had you not your ribs broke? Was you not ſuſpended?"—When, Gentlemen, it turns out *no ſuch thing happened*, but that Captain Churchill behaved *with the greateſt civility towards him*. Whether he had his ribs broke or not, is nothing to the purpoſe. My learned friend Mr. Garrow aſked the queſtion, " Did the captain ſuſpend you for that?" " No." *He ſuffers a man to get drunk, and break his ribs, but never thinks of ſuſpending him.*

Gentlemen. It is the poſitive teſtimony of the witneſſes, that the captain ſpoke of his intention before the veſſel ſailed; and I think the obſervation ſeems to ſhew the defendant had a great deal of intereſt in the ſuſpenſion of this gentleman.

At

At laſt comes my learned friend with his caſe, and the firſt witneſs he called was Dormer, whoſe evidence, I think, would make an excellent parody with Dean Swift's Diſſertation on a Broomſtick.

He ſays, he was the purſer, whoſe duty it is to take care of the proviſions of the ſhip, and to ſerve out butter, cheeſe, mouldy biſcuits, and ſlops. Let us ſee what Dormer ſays. He ſays this:—"I went on board at the Downs, and the captain deſired me to mark Mr. Ryland's behaviour?" Did he ſo? Did Captain Churchill make a confident of a man who deſcribes himſelf to be *a gin-ſeller*, and to have kept a dram-ſhop? I am ſorry to make the remark, that he ſhould ſit down with this *brandy-ſeller*, and obſerve privately to him upon the conduct of this officer: it would have been more to his honour, in my opinion, to have made a confident of Mr. Ryland, who was ſecond in command; and who, without a doubt, would have ſucceeded to the command of the ſhip, if any accident had happened to the defendant: or it would have been more neceſſary to ſay to Mr. Ryland, "I wiſh you would not go in the ſhip—I have ſeen enough of you—and perhaps it will be an uncomfortable voyage to us both." That he keeps from them all; and he ſuffers this man to go on, till it is too late to return. What is to become of him? He ought to have told him ſo before he ſailed. Says Dormer, "I became the obſerver of his conduct at the deſire of Captain Churchill;" and this *retailer of gin*, this *eaves-dropper*, leaves his *muſty biſcuits* to ſee how the plaintiff did his duty, and managed the ſhip. Upon my word, I hardly know how to ſtate it—another thing he tells you is— "the plaintiff was calling men off from doing their duty, when there were

were twenty other fellows lurking about the deck." What is the ſtrength of that? The utmoſt is, that the men did as he deſired them, and returned to the duty from which they were called; from whence no accident aroſe to the ſhip. But, he ſays, "HE took it for granted Mr. Ryland did wrong." The next circumſtance is, as to the Bentick ſhrouds. Now let us examine what Mr. Ryland ſaid with reſpect to the Bentick ſhrouds. On the captain's telling him to "ſet them better up," he ſaid "they were well enough, for they were of little uſe." And, Gentlemen, I am of the ſame opinion with my client; the author of theſe ſhrouds, Capt. Bentick (who is now no more), from whom they took their name, was not eſteemed ſo happy in his invention of the Benticks as in other matters. Now, Gentlemen, what is there in all this? Why, my client is one of thoſe ſort of ſeamen that thought the old method of going to ſea was the beſt, and ſaid "he had known many a good ſhip without Benticks." The next thing you are told was, "*a ſquall came on*," and "*the ſails were not taken in*;" when, Gentlemen, you are told, by the witneſſes who have been examined, *the greateſt damage*, if any, that can ariſe, *is to loſe a ſtudding ſail.*

At laſt he tells you, "Captain Churchill thinks it good, from time to time, to ſend for my client into his cabin." Who was preſent? *Dormer*, the *ſurgeon*, and *Mr. Rutherfurd.* Mr. Rutherfurd is not aſked a ſingle queſtion about what paſſed. Says Captain Churchill, "If you don't come, I will ſuſpend you, becauſe it is diſobedience of orders; but if you do, I will abuſe you moſt confoundedly." Dormer ſays, "the captain was upon deck for two hours, walking backwards and forwards;" and that "Mr.

Ryland never once, in all that time, went forward." Does Captain Churchill ſay, "Is there any body forward? We are near the Salvages, ſend ſomebody to the maſt-head, ſend ſomebody forward." Did he ſay ſo? and did Mr. Ryland refuſe? If he had ſaid ſo, that might have been a foundation for ſuſpenſion. But when he is leaving the deck, he ſays, "Can I leave you, Mr. Ryland, in the care of the ſhip?—Why did not you ſend a man forward?" What was the anſwer? Says Mr. Ryland, "there is a man forward." What does Captain Churchill do? Why, *he immediately ſuſpends him.* What is it for? Becauſe he did not go forward himſelf. Gentlemen, that is a moſt material fact in the cauſe; for if the captain had aſked the queſtion, and my client had given a falſe anſwer at that time, the defendant was juſtified in the ſuſpenſion, and might have ſaid, "You told me a lie; you ſaid there was a man forward, when there was none." If there was an officer forward, where was the danger? Mr. Rutherfurd ſays, that depends a great deal upon the officer. Why, we all know the ſkilful take care to have a good look-out for the land, and always take care to keep it. They had the wind right aft, and the ſtudding ſails ſet; yet this is the cauſe of the unhappy man's ſuſpenſion. My learned friend ſaid, if you ſhould not ſee a probable cauſe for the ſuſpenſion, the idea will be, this action is founded on malice, and you will give no damages: but I ſay the evidence they have called as confirmation of the probable cauſe, is a tenfold increaſe of damages upon their head. Gentlemen; this man does not come here for damages alone; he comes for his character and his honour; and, could I ſuppoſe that he brought this caſe before you from mercenary motives, and

from

from the hopes of deriving any pecuniary advantage, without conſulting his honour, I would throw my brief at his head, and give up the cauſe. But, conſidering the weight of the evidence on the part of my client, the caſe of the defendant fades and ſinks away, and you have before you that man without ſpot or ſtain.

Gentlemen. I own I could not help expecting, from the opening of my learned friend, ſome evidence that would materially affect my client, though he ſtedfaſtly denied every thing that was alledged againſt the defendant: and I am able to ſtate to you, that even the temper of the plaintiff ſeems to correſpond with the reſt of his conduct, which has been attempted to be impeached this day.

My learned friend ſays, the expreſſion I uſed of a "wounded ſpirit" came from a gentleman whom I much reſpect, whom moſt of us know, and whom all of us have heard of; but, Gentlemen, it comes from a much higher authority, it comes from God; for "a wounded ſpirit who can bear?" All the other calamities and misfortunes of life may be borne, but that of a wounded ſpirit none can bear.

Gentlemen. You will obſerve one officer was upon deck, and another officer was ſick in his cabin. He was not well, but he was upon deck about ten minutes after; he could have come, if the captain had ſent for him; but he did not. In the firſt place, was it not neceſſary for Capt. Churchill to have ſaid, "I put you under an arreſt; I ſhall not examine your conduct this hour, but tomorrow I will have all your conduct ſince you came into the ſhip examined." He ſhould have ſummoned all the officers, and ſaid, "*I now bring you before this tribunal of officers, who ſhall be as much your friends as mine,*

*and be your judges.*" I inſiſt that he would have only to prove he had done that, and there would be an end of my client's caſe.

They alledge, as a ground of ſuſpenſion, that he diſcharged ſailors from the ſhip which he ought not to diſcharge. Here are nineteen ſailors at Graveſend who cannot work in the rain, who cannot pull a rope unleſs there happens to be a clear ſky; and yet my client is accuſed of not taking out thoſe ſailors who refuſe to work in a ſtorm of rain. And this is brought againſt him as a reaſon why he ſhould not have your verdict, becauſe he did not carry diſobedient men in the ſhip. Gentlemen; my learned friend, as he always does upon theſe occaſions, brings to your mind the melancholy ſtories of the Groſvenor and the Halſwell; but, I venture to ſay, had theſe men ſailed in the ſhip, the Walpole would in all probability have ſhared the ſame unhappy fate as the Halſwell Indiaman did.

The next point we have to conſider is this, What was the plaintiff ſuſpended for in the courſe of the voyage? Did Captain Churchill ſend for him, and ſay, " Sir, you have not conducted yourſelf properly, you did not go forward when you ſhould, and you had too much ſail in a ſquall; I will not keep you pining for two long years; let us make this up again." Was there any thing of that ſort done? Does it appear he gave *the leaſt intimation of his intention of doing that?* No ſuch thing. *He ſuſpends him; and gives him,* as Dormer tells you, *ſome paltry wax-candles and wine, to comfort him.*

Now, Gentlemen, we come to the laſt point of all; and it is this:—*The plaintiff was prevented from having* HIS PRIVILEGE, FREE OF COST HOME. According to my learned friend Mr. Bower's croſs-exami-

examination, I underſtand there was a rotation by which the different officers goods were ſold; and I find, from the croſs-examination, he would have had an opportunity of getting *much more* for his goods than in fact he actually got.

Gentlemen. As I ſaid before, you will not narrow the duty you have to execute. Think of the privileges of *human beings*; think of the *rights and privileges of Engliſhmen.* Thoſe are the privileges you are to conſider; and I am ſure you will do juſtice to my client.

I conclude with ſaying, I do not wiſh to carry my obſervations upon Captain Churchill further than the ground of this caſe warrants me. The plaintiff's exiſtence depends upon the verdict you give. If you ſay, by the ſize of your verdict, he has behaved improperly, he muſt remain without any employment in the ſervice; for I truſt the Company will not employ men who have acted improperly in the ſtations which they have filled.

*Lord* KENYON. Gentlemen of the Jury; I ſhall add but very little to what has been already ſaid in this caſe; and ſhall leave out of it that which does not immediately belong to it.

Gentlemen. The plaintiff was firſt mate of the Walpole, in the ſervice of the Eaſt India Company, and the defendant was the captain of the ſame ſhip. I confeſs there ſeems to be a great portion of evidence, on the part of the defendant, that has nothing to do with this cauſe. It was the duty of both to be attentive to the concerns of their employers. The captain ſhould conduct himſelf with moderation and candour to his inferior officers:—the mate ſhould ſubmit to all legal commands. The captain was to act with firmneſs, that ſhould inforce proper diſci-

pline

pline on board. According to the law of this country no inferior ſhould be removed from his office by his ſuperior, unleſs there was a particular ground, on which a reaſon could be aſſigned for removing him; and if the ground of that removal was not ſtated, there muſt be implied to the defendant that ſort of temper which the law terms *malice*. Although it is not abſolutely neceſſary in point of law, for the captain to call on all the officers for their advice, before he ſuſpends another (a circumſtance which the captain had but partially done in this caſe), *yet if he ſuſpends without ſuch council, he muſt abide and anſwer the conſequence of it, as his own act*. And in that caſe he treads upon delicate ground; for if it ſhould afterwards appear, *that ſuch a ſuſpenſion was not juſtly warranted by the combination of circumſtances, which produced it, the captain takes the whole of it upon himſelf*. It was mentioned in the defendant's caſe, that the plaintiff gave impertinent anſwers to his captain; but there was not one word of that allegation proved. If the plaintiff had at any time been guilty of rudeneſs, or other impropriety, the captain ſhould not have waited to ſee theſe things repeated, he ſhould have made his ſtand there, and made his objection at once to the plaintiff, who ſtood in the ſecond ſituation in the ſhip, and upon whom the whole command devolved in caſe of the removal or death of the captain: I think he ought at that time to have made the objection. It is impoſſible for him to preſs into the cauſe the circumſtance which is alledged to have happened on the night on which he was ſuſpended; and it is neceſſary to examine whether that was really and truly the ground on which the captain proceeded to ſuſpend him; for it is in evidence, the

plaintiff

plaintiff was upon the watch, and that the capt[ain] ſuſpecting things would not be well, goes upon deck, and remains there two hours, during which time, he obſerved to the plaintiff, he did not once go forward. You ſee the defendant was putting himſelf in a ſituation, in which if there was real danger, he was enabled to make the obſervation, if the ſafety of the ſhip and ſelf-preſervation called for it—yet, you obſerve, during that time he did not order the plaintiff to go forward to look out for the rocks; and if there was any danger, it is too much to ſay the plaintiff ſhould ſuffer for a piece of neglect, in which the captain was equally culpable. The whole queſtion, therefore, muſt now turn on the nature of the ſuſpenſion; and it will be proper on this head to ſee whether the ſuſpenſion of the mate *was neceſſary for the ſafety of the ſhip*.

*There does not ſeem to be any good or honourable reaſon for ſuſpending the plaintiff*; it did not ariſe, as alledged, from a deſire of the preſervation of the ſhip. I confeſs I do not approve of the manner in which *that wretched, evaſive evidence, Dormer*, gave his teſtimony, and the manner in which Mr. Edgeworth fenced with the oppoſite counſel; but however, if you will believe Mr. Edgeworth, it ſhews the motives which influenced the defendant's conduct, *were motives which I cannot ſay were the moſt worthy*. It ſeems there was *ſomething upon his mind, which he did not chuſe to reveal, as a reaſon for ſuſpending the plaintiff*; for it is clear, from the evidence, *the defendant did not act with good-will towards him*; and this is what the law calls *malice*.

If it reſted upon *that* evidence alone, but undoubtedly it does not, becauſe the firſt witneſs that was called, Mr. Baldey, likewiſe tells you, that the defendant

ndant had applied for Mr. Rutherfurd to be firſt mate, but did not ſucceed;—if, therefore, that ſuſpenſion was not well juſtified by the ill conduct of the plaintiff, I don't ſee from what it could proceed. And here I cannot forbear recommending to you to exerciſe your judgement with moderation; for it is poſſible, if you ſhould give large and inflammatory damages, they would defeat the purpoſes of juſtice, by tending to increaſe the diſpute between the parties, rather than end it; as they might induce the defendant to move for a new trial, on the ground of exceſſive damages, and put the public in too much peril. I muſt make one more obſervation, in addition to thoſe I have already made, which is—if you ſhould think yourſelves bound, as I think you are, to give your verdict for the plaintiff, you will, by that verdict, *prove the plaintiff has done nothing wrong, and that he is as worthy of confidence and reſpect as if he had never been ſuſpended.* You will not give yourſelves up to the moment of reſentment againſt the defendant, but give thoſe fair damages to the plaintiff which you think the nature of the caſe deſerves.

*The Jury deliberated for a few minutes, and found a Verdict for the Plaintiff,*

Damages, FIVE HUNDRED POUNDS, and Coſts.

FINIS.

Ex Cl
7/3/29